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Member states rejecting ‘Frankenstein Food’

A principal-agent analysis of the policy process that led to the possibility to ban the  
cultivation of GMOs

Master’s Thesis  
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**Abstract:**

In this thesis, I study a policy process that led into a possibility to ban the cultivation of GMOs in the member states of the European Union. In practice, this happened by adding a new article to the directive 2001/18/EC. Before the policy process, all the member states were required to allow the cultivation of GMOs that were authorized at the EU level. However, this prior “one-size-fits-all approach” did not work as planned. A number of member states invoked safeguard clauses to prevent the cultivation of the authorized GMO crops, while the pro-GMO countries could not cultivate as great of a variety of different GMO crops because other countries were blocking the authorization of them. In addition, because of a continuous blocking of new approvals on GMOs, the EU had in place an unofficial de facto moratorium of new GMO approvals which was problematic from the point of view of the rules of the international trade. In this thesis, I study the legislative process that led into amending the directive 2001/18/EC and to some extent, renationalizing the decision-making on GMO cultivation. The focus is on the roles of the main EU decision-making bodies in the process, namely the European Commission, the Council of the European Union and the European Parliament.

The interest lied in the interplay between the institutions, the expected preferences of them and dynamics within the Council. The analysis is done by using three different approaches. The model used in this thesis regarding the expected preferences of the institutions is based on Mark. A. Pollack’s (2003) perception of the principal-agent analysis in rational choice institutionalism. In addition to this, the Parliament’s environmental ambition is analyzed by using typology developed by Burns and Carter (2010). The strategy used by the “leader” countries within the Council are analyzed by using the classification by Liefferink and Andersen (1998). Key material for this research consists of the official drafting documents of the directive, as well as journalistic reports. The method of the thesis is an intrinsic case study. The case that is studied is the policy process 2010-2015 that led to member states’ right to ban the cultivation of GMO crops in their territory. The decision was made under the rules of the co-decision procedure.

The analysis revealed a political environment unfavorable to the continuance of the centralized approach. The Commission and the Parliament both acted in a counterintuitive manner throughout the policy process as they are generally believed to be both pro-integration and for maximizing competences, both for themselves and for the Union as a whole. A slightly deeper look into the history of the food-related risk regulation, the prevalent political environment of the time and the policy documents provide a few possible reasons for their actions such as increased Euroscepticism, that has also in the past affected in a similar manner the Commission. In addition, the analysis revealed that the Parliament demonstrated pro-environmental preferences, as it made pro-environmental amendments to the initial proposal for the directive despite many of them being blocked by the two other institutions. Still, the Parliament was able to ‘green’ the proposal, even though the final text was closer to the common position of the Council. Within the Council, a pushing effect of certain “green member states”, especially Austria’s, was prominent.

## **1. Introduction**

Environmental policy has developed remarkably in the European Union during the last four decades. At first, European integration was mainly an economic project meant to enhance economic cooperation between European countries in the war-torn continent. As time passed, member states of the EU and its early forms started to co-operate in an increasing number of policy areas other than economic, including the environment (Knill & Liefferink 2013). As economic activity often leads to environmental problems, it has been a natural step to include issues relating to environmental protection into the EU's agenda. In general, most of the environmental issues are intertwined with other policy areas, such as the internal market (Peterson & Bomberg 1999). Today, environmental policy is likely one of the most Europeanized policy areas, which means that the EU's environmental policy has a significant impact on national environmental policies and limits considerably the policy choices available at the member state level.

One of the environmental policy issues in which the EU has extended its competencies is GMO policy. The World Health Organization (WHO) defines GMO foods as “organisms (i.e. plants, animals or micro-organisms) in which the genetic material (DNA) has been altered in a way that does not occur naturally by mating and/or natural recombination” (WHO 2014). EU's competencies in this policy sphere cover issues such as the traceability and labelling of GMOs (Regulation (EC) 1830/2003), cultivation of GMOs (Directive 2001/18/EC and 2015/412) and the use of genetically modified food and feed (Regulation (EC) 1829/2003). As other environmental issues, GMO issues have strong connections to other policy fields, such as internal market, agriculture and food-related risk regulation.

What makes GMO issues slightly different from many other environmental issues, however, is the importance of the EU's GMO policy to transatlantic relations. The EU is often called a ‘global precautionary superpower’ when it comes to environmental policy issues, and the issue of GMOs is no exception (see for example Tiberghien 2009). EU's precautionary approach to GMOs has caused tensions between the EU and the United States and has led to a dispute through the World Trade Organization in 2003 (WTO 2003). The USA has interpreted the EU's reluctant stance towards GMOs as a form of protectionism since banning the harmfulness of the GMOs is scientifically unfounded. More recently, GMOs have been an important topic in the Transatlantic Trade and Investment Partnership (TTIP) negotiations. The fears have been expressed over the possibility that the TTIP could force the EU to accept a wider use of GMOs and open the markets for hormone-

treated beef. These fears have been overturned by the Commission (European Commission 2016), which acts as a negotiator on behalf of the EU, however, this has not appeased the concerns of citizens and NGOs.

One of the recent developments in the EU's GMO policy has been a decision to grant the member states the right to ban the cultivation of GMOs in their territory. The institutional discussion of the proposal took five years, illustrating not only the complexity of issues related to GMO cultivation, but also the difficulties of reconciling different national and institutional interests. Before this policy process came to a close, the EU had a centralized approach to approving GMO crops for cultivation. In this centralized approach, the European Food Safety Authority (EFSA) was responsible for assessing GMO crops. If the EFSA concluded the assessed GMO crops to be safe, member states were expected to allow the cultivation of them in their territories.

However, this is not how the situation was in practice. Some member states such as Italy, Austria and Germany were not willing to accept certain GMO crops for cultivation, even though the approval for the cultivation had already been granted and invoked the safeguard clauses provided in the legislation to ban the cultivation. In addition to that, some member states continuously blocked the approvals on new GMO crops even though the EFSA had deemed them safe. This was problematic as the pro-GMO countries were not able to cultivate as great of a variety of different GMO crops due to the blocking of authorization by other countries. Moreover, because of the continuous blocking of new approvals on GMOs, the EU had in place an unofficial de facto moratorium of new GMO approvals which was potentially violating the rules of international trade.

Put simply, before the policy process, the EU member states were required to permit the cultivation of GMO crops that were authorized on the EU level, whereas after the policy process, the member states that wished to opt out were allowed to. This means that in this policy process, power was taken back from the EU level to the national level, which is rare in the EU-context. In the past, the notion has been that there is only one way and that is towards deeper integration or an "ever closer union". As envisaged in the Lisbon Treaty, this policy process showed that the policy process can go backwards and powers can be taken back to the member state level.

As one can imagine, the legislative process was prolonged, messy and emotional. The debates in the European Parliament (hereafter 'The Parliament') alone shed light onto the strong emotional context of the issue. Elizabeth Köstinger, the European People's Party Group's negotiator, delineated that "every MEP had a personal opinion on the topic, ranging from fierce rejection of GMO to avid defence, thereby reflecting a considerable rift between member states' positions" (EurActiv

20.4.2015). The strong emotional context and especially the differences between the member state opinions on the issue made it also difficult to reach an agreement. It is not far-fetched to claim that this policy process was one of the most contested ones in the environmental policy sphere in the 2010s.

Other scholars have shown interest towards this policy process. For example, Sara Poli has carried out a practical examination of different features of the proposal in two of her articles (Poli 2015; Poli 2013). Randour et al. (2014) have asked why the Commission, generally believed to normally behave as “a competence-maximizer”, acts in a counterintuitive manner in the process. Charlotte Burns (2012, 341) has made a historical institutional analysis on what led to this deadlock situation, in other words how the EU’s policy on biotechnology became “locked into a sub-optimal path, with a fractured regulatory system and limited release of new crops onto the market.” However, insofar, scholars have not used the principal-agent model and other preference-based approaches to make sense of the legislative process. Analysing the process through the preference-based theoretical framework and focusing on the actions of the main decision-making institutions provides considerable help in making sense of it. The approaches that are used are presented next.

In the EU studies, the principal-agent model is used to study the interactions between the EU institutions. In this thesis, the focus is placed on three of them: The Commission, the Parliament and the Council. These three are also the main decision-making bodies under the co-decision procedure. In Pollack’s version of the principal-agent model, the assumption is that supranational institutions (including the Parliament and the Commission) are having pro-integration and competence-maximizing preferences. These agents can act upon these preferences in the limits set by their principal, the Council (Pollack 2003). Already, neo-functionalists believed that these supranational institutions are “engines of integration” (see for example Haas 1958), and there is also evidence that in practice, the supranational institutions have acted upon these preferences in actual decision-making situations (Pollack 2003). By doing a careful case study analysis, which takes account the different contextual factors in the political environment, we can find reasons as to why (or why not) the institutions are not acting upon these preferences. Above all, the principal-agent model sets out a clear framework for analysis that is based on what we already know about institutions and their preferences in the EU context.

However, as Hix and others have pointed out, the EU institutions have multiple interests (Hix 1994). Even though I agree with Pollack that the pro-integration and competence-maximizing preferences are more consistent and predictable (Pollack 1998, 219), EU literature has provided convincing proof of an existence of other preferences. In a number of cases, the European Parliament has acted as “pro-

environmental actor” (see for example Burns et al. 2013). In regards to the Council, this sort of strong consistent environment-related preferences is not detected. Instead, scholars have argued that the environmental leader-laggard dimension has been said to explain far the dynamics within the Environment Council (Weale et al. 2000, 94; Wurzel 2014). In other words, the Council in its entirety does not necessarily have pro-environmental preferences, rather, the individual ‘green’ member states are responsible for advocating more ambitious policy initiatives within the Environment Council.

What is common to all these approaches and expectations presented, is that the interest lies on the preferences of different actors and how these preferences affect decision-making. Using the knowledge of the environmental preferences of the Parliament and the dynamics within the Environment Council in the analysis makes it more nuanced without losing the clarity provided by the main approach used in the thesis, the principal-agent model.

The following questions are what this thesis aims to answer:

1. What were the preferences of the EU institutions in the decision-making process and what was the relative influence of these institutions?
2. Does the leader-laggard dimension sufficiently explain the dynamics within the Environment Council?
3. What explains the outcome of the legislative process?

Concerning the first question, I have formulated two hypotheses:

1. "The Commission and the Parliament, both have pro-integrationist and competence-maximizing preferences during the decision-making process of the GMO directive."
2. "The Parliament has pro-environmental preferences during the decision-making process of the GMO directive."

Whereas concerning the second question, I have formulated one hypothesis:

3. The leader-laggard dimension explains the dynamics among member states within the Environment Council."

The model used in this thesis is based on Mark. A. Pollack's (2003) perception of the principal-agent analysis in rational choice institutionalism. The Parliament's environmental ambition is analyzed by

using typology developed by Burns and Carter (2010). The strategy used by the ‘leader’ countries is analyzed using the classification by Liefferink and Andersen (1998). Key material for this research consists of the official drafting documents of the directive, as well as journalistic reports. The method of the thesis is an intrinsic case study. The case that is studied is the policy process 2010-2015 that led to member states’ right to ban the cultivation of GMO crops in their territory. The analysis reveals a political environment unfavorable to the continuance of the centralized system.

## **1.1 Research questions and their motivation**

The European Union is an important player in global environmental politics and aims to play a frontrunner role in many issue areas (Delreux 2013, 302). Probably the most important environmental policy field today in which the EU is also often perceived as a leader is global climate change politics (Wurzel & Connelly 2011). It was the negotiations for international treaties to protect the stratospheric ozone layer that enabled the EU to establish this international “actorness” (Vogler 1999). At first, the EU faced difficulties before being accepted as an actor in global environmental politics, however, today, its recognition is uncontested (Delreux 2013, 290). The EU’s competences in the field of environmental policy have grown because of various treaty changes which have granted more competences to it. Today, the EU has a broad range of internal environmental legislation, which is likely the strictest supranational environmental policy system in the world. This policy system has enabled the EU to lead by example (Delreux 2013, 302). Therefore, in addition to environmental policy-making in the EU, internal dynamics is also significant in regards to the EU’s role in global environmental politics.

This study started with an interest in the current dynamics in environmental policy-making in the European Union, and specifically, the dynamics between the EU institutions. Choosing a suitable case for the study started with a search from the EU database. The search options were the following: directives from years 2013-2015, using the search word “environment.” The number of directives to choose from proved to be surprisingly small, however, this was not due to search options. Rather, there has been a considerably long four-year period of almost complete regulatory inactivity after the year 2010 in the environmental policy field (Steinebach & Knill 2016).

One plausible explanation for this inactivity is the rise of Euroscepticism. Also in the past, the EU has reacted to the rise of Euroscepticism by diminishing the number of directives that they produce. As put by Peterson and Bomberg (1999, 176), “by the time the Maastrich Treaty was finally ratified



in 1993, public interest in environmental issues had begun to wane” and “new popular doubts about the European project was one important factor motivating the Santer Commission to try ‘to do less but do it better’”. More recently, Politico has assessed the legacy of Barroso’s second Commission and concluded that during the term, the Commission was less environmentally ambitious than during the first. The Commission, and particularly Catherine Day, the Commission’s secretary general (and a former director-general for Environment), was blamed by environmental interest groups of being personally responsible for hindering various proposals drafted by the environmental department. The Commission insiders explained this as “a response to growing Euroscepticism and the negative mood about ‘red tape’” (Politico 11.1.2014).

In addition, after Juncker’s Commission took office in 2014, environmentalists have voiced concerns over a small role for environmental policy in the new Commission. In his article “a post-austerity European Commission: no role for environmental policy?” Čavoški has assessed the current state of affairs in the environmental policy field by making an overview on relevant documents of the Commission and come into a conclusion that these concerns are not without a foundation. (Čavoški, 2015.) For instance, the word “environment” is used in Juncker’s Political Guidelines for the new Commission four times, and of these four times, only once to refer to the natural environment. The remainder refers to investment, regulatory and business environments. (European Commission 2014b). As Čavoški puts it, “as expected the main focus of the new Commission is a post-austerity agenda to stabilise national economies and boost jobs growth and investment”. (Čavoški 2015, 501). Were it due to Euroscepticism or economic situation, the interest in environmental issues has seemed to decrease since the Barroso’s Second Commission as also the small number of environment-related directives during the years of 2013-2015 indicated.

The original search resulted in three suitable directives to choose from. Following a media search, I decided to focus on the EU Directive 2015/412 amending the Directive 2001/18/EC as it dealt with the decision of member states to restrict or prohibit the cultivation of GMOs in their countries. Furthermore, it appeared to cause the most tension, which would therefore be most interesting and suitable in studying the interactions among the EU institutions. Unlike the other two, the directive required two readings to pass. The speed, however, does not always signal how controversial the issue has been. In fact, De Ruiter’s and Neuhold’s (2012, 552) review on relevant literature on decision-making procedures indicated that a fast-track procedure is often used especially in highly controversial cases. Therefore, a fast policy process is not necessarily indicating that a case was uncontested. Nevertheless, relevant media indicated that the GMO directive was in fact more controversial than the other options. That was also why this directive was chosen: a more

controversial policy process would more likely reveal interesting issues concerning the inter-institutional relations and the preferences of different actors than a less contested one.

This Directive is not only a suitable case to study the dynamics of the EU institutions but also interesting in its own right. Basically, the Directive is not only about granting member states the right to ban the cultivation of GMOs in their territory but also about taking decision-making powers back from the EU level to the member state level. The act has been inspired by the principle of subsidiarity and is the first “internal market” act in which the EU returns decision-making powers back to the national level. According to Sara Poli, this “has a high symbolic value for the whole EU integration process. For a long time, there was a presumption that the latter was a one-way street towards the increase of the EU competence. After the Lisbon Treaty, it was made clear that in areas of shared competence, such a presumption does not apply anymore” (Poli 2015, 562-563.) In addition, the Directive shows that the EU is continuing with its precautionary approach to GMOs. As a result, finding out the dynamics leading into the final decision is intriguing.

The principal-agent was chosen as the model sets out a clear framework for analysis that is based on what we already know about institutions and their preferences in the EU context. It helped to ask the right questions, such as: are the EU institutions acting in a way that we are expecting from them, and if not, why? I also chose to study the environmental credentials of the Parliament since the literature provided convincing proof of the existence of this preference. At first glance, in this case, the pro-environmental and pro-integration preferences seem to conflict with one another which made it compelling to pose a question: in a conflict situation, upon which preference would the Parliament decide to act? This query is embedded in the current study questions and hypotheses presented earlier.

The leader-laggard dimension is often described as going a long way in explaining the dynamics within the Environment Council. In this policy process, the activity of one of the ‘greener’ member states, namely Austria’s role, was especially significant. Therefore, the focus was put on the strategy used by this member state.

## **1.2 Important concepts**

First off, it is good to start by addressing what is meant by “GMOs”. World Health Organization (WHO) defines GMO foods as “organisms (i.e. plants, animals or micro-organisms) in which the genetic material (DNA) has been altered in a way that does not occur naturally by mating and/or

natural recombination” (WHO 2014). It is most likely the “unnatural nature” and public fears over GMOs that have led the media to sometimes refer to GMOs as “Frankenstein food”. Frankenstein, the book known by all and written by Mary Shelley, tells a story of a young scientist, Victor Frankenstein, who creates a new form of life using unconventional methods. As the story goes, everything does not go as planned and the creature turns out to be a dangerous monster. The story is often understood as reflection of the fears towards the power and danger of science. The message that the story is sending can be summarized as follows: we should not try to force what is not natural because it can cause disaster. The “Frankenstein food” metaphor is catching quite well the public unease about GMOs and this is why it is also used in the title of this study.

The other important concepts in this thesis are borrowed from the political science literature. One of these concepts is the word “policy”. According to Gunn & Hogwood the most commonly encountered usage of the term is in the context of broad statements about a government’s ‘economic policy’ or its ‘social policy’. Further, within these broad labels, there are also more specific references to the government’s policy towards different policy areas, such as housing policy or policy regarding the EU. What is actually been described here appears to be ‘fields’ of governmental activity and involvement. (Gunn & Hogwood 1984, 13-15.)

For the purpose of this study, this definition is too broad. However, the term ‘policy’ should neither be understood too narrowly, for example, in everyday usage where the distinction between ‘policy’ and ‘decision’ is often overlooked. As Gunn and Hogwood write, policy is larger than a decision and “a policy usually involves series of more specific decisions, sometimes in a ‘rational’ sequence (e.g. deciding the best way of proceeding; deciding to legislate etc.)” (Gunn and Hogwood 1984, 19). Verluis et al. (2011, 11) agree that policy is more than a single rule of law and it can also refer to inaction such as the decision to stick with the status quo.

Versluis et al (2011) perceive policy as “something bigger” than particular decisions. They define policy as follows: “Policy refers to a deliberate course of (in-)action selected from among available alternatives to achieve a certain outcome” (Versluis et al. 2011, 11). The other main element in this definition is that policy is usually meant to address a certain problem and therefore is meant to achieve a certain outcome. In this context, ‘deliberate course of action’ refers to ‘purposiveness’ of some sort (Versluis et al. 2011, 11). Often the basic distinction is made with the word “policy” and “politics”. As Lasswell famously put it, politics refers to the process, by which a group of people determine “who gets what, when and how” (Lasswell 1958). In this context, politics refers to the wider process in which policies are created. In short, the concept of “policy” is distinct from other related concepts

such as “decision” and “politics”. It is an action aiming at a certain outcome that is larger than a single decision but smaller than a whole policy field.

Next, after gaining an understanding of the meaning of the concept “policy” and how it differs from politics and a single decision, it would be worth exploring the concept of “policy analysis”. According to Dye (1976, 1), policy analysis is about “finding out what governments do, why they do it and what difference it makes” and even though more elaborate definitions of policy analysis can be found in the academic literature, they pretty much boil down to the same thing - the description and explanation of the causes and consequences of government activity”. However, in the politics of the European Union, governments are not the only actors involved. Surely national governments are playing an important role in the decision-making processes but supranational institutions are as well. However, in case we replace the term “government” by another broader term which also includes the EU institutions, the definition of policy analysis by Dye is applicable in this context. In contrast to Dye’s definition, Dunn emphasizes the strong linkages to academic literature and theories, categorizing “policy analysis” as a problem solving-discipline that draws on theories, methods and substantive findings of the behavioral and social sciences, social professions and both social and political philosophy (Dunn 2004, 1).

In sum, policy is defined here as something bigger than a single decision yet something different than a process through which people make certain choices (politics). Put simply, it is action that is designated to result in an outcome (either by sticking with status quo or moving forward), among a number of possible choices. Now, after defining the key concepts, it is time to observe environmental policy and decision-making in the European Union.

## **2. Environmental policy and decision-making in the European Union**

### **2.1 Environmental policy in the European Union**

At first, environmental issues were not at the core of European integration. Instead, the word 'environment' was not even mentioned in the Treaty of Rome that established the European Economic Community in 1957. The co-operation in the early steps of the community we today known as the European Union was mainly about boosting the economy and repairing the relations in war-torn Europe. Considering this, the environmental policy of the EU has developed in a remarkable fashion during the last four decades. Today, it is not possible to understand the national environmental policies of the member states without understanding the environmental policy in the EU (Knill & Liefferink 2013, 13-30). The European Union has developed “an increasingly dense network of legislation” which covers areas of environmental protection such as air and water pollution, management of waste, protection of consumers, as well as wildlife and countryside protection; and how, considering the legal and institutional conditions that were in place at the end of the 1960s, developments of this kind could hardly be expected (Knill & Liefferink 2013, 13).

Environmental policy is one of the most integrated policy areas in the EU. The impact of the EU on environmental policy is so remarkable that today almost all national policy in this field is made by, or in close association with, the EU (Jordan 2002), making environmental policy highly Europeanized. For instance, in one of the most comprehensive cross-sectoral analyses of Europeanization in the UK, Bache and Jordan (2006) found out that environmental had been the most Europeanized of five policy areas covered (the others being foreign affairs, competition, monetary and regional policy). The high Europeanization of the environmental policy means that the policy choices in the European Union level limit considerably the decision-making options available in the member states.

Peterson and Bomberg characterizes environmental policy as “one of the EU’s most diverse and crowded policy realms, populated by a staggering array of actors and interests. By its very nature, decision-making on environmental issues is highly technical and driven by scientific expertise” (Peterson and Bomberg 1999, 173). In the case of the GMO directive, these elements are especially apparent. The GMO policy-making in the EU involves farmers, business groups (both within the EU and in the US), environmental organizations, scientists, and consumers among others. The scientific assessment of the safety of GMOs is especially important in this case.

Not only the GMO issue, but also a broad scope of most environmental issues has become increasingly intertwined with other sectoral issues, especially those surrounding agriculture, cohesion, transport and the internal market (Peterson & Bomberg 1999). The GMO issue is no exception. Pollack and Shaffer delineate the nature of biotechnology as "an issue that is inherently multi-sectoral, requiring horizontal coordination across a range of issue areas; inherently multi-level, requiring vertical coordination across the national, supranational, and international arenas; and inherently concerned with risk regulation, requiring difficult, highly contested decisions about the role of science and politics in the assessment and management of risk to modern European societies" (Pollack and Shaffer 2005, 330-331).

Even though biotechnology has strong connections to other policy fields, and can be treated as a trade, internal market and risk regulation issue to name a few, the Commission's Directorate-General held responsible for the issue has been the one designated to environmental affairs. The new legislation has been negotiated and adopted predominantly by the Council of Environment Ministers, jointly with the European Parliament. This is largely due to the potential of environmental effects, and particularly the effects associated with the release of GMOs (ie. seeds and crops) (Pollack and Shaffer 2005, 331).

The linkage between environmental issues and the single market become especially apparent when one studies the different phases of environmental policy. The development of EU environmental policy can be broken down into three phases. In the first phase (1972-1987), the legal justification for taking environmental measures were trade policy motives. At that time, the focus was mainly on harmonization of different environmental regulations that could disturb the completion of the single market (Knill & Liefferink 2013, 28-29). Due to an increasing number of cross-border environmental issues and the active role of individual member states (Andersen and Liefferink 1997a), "a respectable programme of often very ambitious measures and activities emerged despite a weak legal and institutional basis" (Knill & Liefferink 2013, 28). At the same time, environmental policy started to emerge as "an independent policy domain," separated from the area of economic integration (Knill & Liefferink 2013, 28-29).

In the second phase (1987-1991), the legal and institutional settings were strengthened and the common environmental policy was developed further. The Single European Act (SEA) set out formally what was already reality in everyday policy-making. The SEA raised environmental policy to one of the official fields of activity of the Community. The SEA laid down the aims, principles and decision-making procedures for environmental policy, which strengthened considerably the EU's environmental policy authority. The SEA also brought along other important institutional changes.

For instance, the treaty introduced a novel decision-making procedure that was used when the EU decided on the environmental issues relevant to the single market. From that day on, decisions could be done in the Council of Ministers if a qualified majority was reached. It was commonly expected that this change would mean that the EU would start to agree on more stringent environmental regulations, which would go “beyond the lowest common denominator,” however, this proved to be only partially true (Knill & Liefferink 2013, 28-29).

The third phase (post 1992) can be characterized by two opposing trends. On the one hand, during this time institutional and legal arrangements were updated and revised further, especially in the Treaties of Maastricht and Amsterdam, as well through a creation of the European Economic Area (EEA). On the other hand, at this time environmental issues seemed to have lost a momentum on the European agenda (Knill & Liefferink 2013, 28-29).

According to Bomberg and Peterson (1999), the increased activity of the EU in environmental issues was not a result of rising green awareness or the increased awareness of global environmental issues. Rather, the reason was the will to eliminate trade distortions between the member states in the common market. Very diverse national regulations on industrial pollution could mean that the countries polluting more, or ‘dirty states’, could profit economically at the expense of countries with more advanced environmental regulations (Lodge 1989, 320).

In recent history, a policy development worth mentioning is the Lisbon Treaty entering into force in 2009. This policy process leading into the signing of the Lisbon Treaty were, according to Benson and Adelle (2013, 32), characterized “by significant speculation, and indeed, heated controversy over its alleged impacts on EU politics, policy and governance.” Now after several years have passed, it has become possible for scholars to analyze the actual impacts of the Lisbon Treaty to day-to-day policy-making. Benson and Adelle (2013, 32) summarize the Lisbon Treaty’s impact on the environment as ‘comme ci, comme ça’ – neither good nor bad. In some respects, the EU gained power, whereas in other respects, the Lisbon Treaty weakened it (Benson & Adelle 2013, 32). One of the notable changes that the Lisbon Treaty brought along was the co-decision procedure being extended to new policy areas, meaning that the Parliament gained more power vis-à-vis to the Council. This is namely the procedure under which this decision-making is done.

## **2.2 Decision-making system of the European Union**

In this section, I will present the functions of the European Commission, the Council and the Parliament which form the core of the executive and legislative bodies in the decision-making system of the EU. Furthermore, I am explaining what roles these institutions play in the decision-making processes in relation to environmental politics.

### ***2.2.1 The Council***

The Council is an intergovernmental body of the union which is composed of ministers from the governments of the member states. Decisions that the Council make are first prepared in working groups and Coreper meetings. The final decisions are reached in the ministerial meetings. The Council of the EU is a single legal entity but it meets in several different ‘configurations’ that focus on certain subjects such as agriculture and transport (Gallagher et al. 2011, 132-134).

Each member state holds a Presidency of the Council at their turn and the post rotates each 6 months. According to Gallagher et al. (2011, 132), because of the shortness of the term, the role is not a very important one and the Presidency cannot “begin any new initiative to fruition” but at best, it can “speed up or slow-pedal some of those projects already on the books, and perhaps introduce initiatives that it expects might be carried forward”. Nonetheless, in the decision-making situations, the Presidency may to some extent “pull decision outcomes toward their favored policy position” (Thomson 2008, 611-613). Therefore, the Presidency also gives some political power.

The Council is the decision-making center of the EU and it possesses both executive and legislative powers. There are two central ways in which the Commission exercises these executive powers. It sets the long-term policy goals and delegates certain powers to the Commission so that these goals can be reached. These two tasks relate to the political (leadership) dimension of executive powers. Secondly, heads of government set the medium-term policy agenda for the union and monitor the national macroeconomic policies of the states through the “open method of coordination”. These two executive powers that the Council possess relate to the administrative (implementation) aspect. The member states have the responsibility to implement EU legislation through their national bureaucracies. In addition, the member state governments manage the everyday administration of EU policies together with the Commission through the comitology system (Hix 2005, 31). When it comes



to the legislative powers, one of the main tasks of the Council is to decide on the new legislation. Today, in most cases jointly with the Parliament, as the co-decision procedure has become the main decision-making procedure in the EU. Next, it is time to take an overview to the Council's role, internal functioning, and the dynamics within the environmental policy sphere.

### ***The Council and environment***

As explained earlier, there are different Council formations (made up of ministers responsible for particular policy areas) and one of these is the Environment Council. The Environment Council is responsible for EU environment policy, including environmental protection, prudent use of resources and the protection of human health. Moreover, it deals with international environmental issues, especially in the area of climate change. According to Wurzel, among different actors, the Environmental Council is the most important one shaping external environment policy. Over the years the number of Environmental Council meetings has increased significantly which indicates the increased importance of environmental matters in the Union's agenda (Wurzel 2014, 75-77).

The environmental leader-laggard dimension has been said to explain the dynamics within the Environment Council (Weale et al. 2000, 94; Wurzel 2014). This dimension has not only been used to explain the dynamics within the EU, but also in the international policy sphere (Sbragia 1996; Liefferink and Andersen 1997b). In this view, member states can be divided to 'leaders' who push for higher environmental standards or 'laggards' who, for one reason or another, oppose raising the environmental standards. The proponents of this view put countries such as Denmark, Germany and the Netherlands, and from the newer member states Austria, Finland and Sweden to the leader category (Weale et al. 2000). However, scholars have started to increasingly question whether Germany belongs in the group (Pehle, H. 1997) and many associate the UK with the group (Héritier et al. 1996; Liefferink & Andersen 1997b).

Environmentally progressive 'pioneers', no matter how exactly defined, have indeed been important pushers for more advanced environmental policies. These countries have sought to take their own domestic, ambitious regulatory solutions to the other policy levels. This fulfills two purposes. Firstly, being a pioneer is often costly: having more stringent environmental regulation tends to mean increased costs for the economic actors within the country. Therefore, making others take similar costly measures would diminish the competitive disadvantages for the industry. Secondly, sometimes the country benefits considerably from the transboundary action. Sometimes transboundary flows of

pollution are hindering the country to fulfill its own national environmental policy goals, and therefore getting others to follow more stringent environmental regulation might prove to be crucial in the process of meeting the countries' own goals (Lieberink and Andersen 1998, 254).

While scholars have agreed more widely on which countries should be perceived as leaders, more disagreements exist when it comes to the laggards. One common example is the UK, which gained a questionable reputation as a “dirty man of Europe” in the 1970's. Also, the cohesion countries and Italy are suggested to belong to the laggard category. Another more nuanced classification agrees on the countries which belong to the leader category, however, it classifies Italy, France and the UK as belonging to the “intermediate category” and puts the rest of the countries in the “laggard” category (Weale et al. 2000, 94-95). However, as mentioned earlier, there are many who would put the UK in the “leader” category. Recently, for example, the UK has clearly been an ambitious actor in climate politics, repeatedly advocating higher emission targets than most other member states, thereby increasing ambition of the EU's longer-term targets. In addition, the UK influenced the choice to adapt the emission trading scheme as a key policy instrument in the European Union, as it had a similar system in place on the national level (Rayner and Moore 2016).

However, it is often argued that rather than there being a static division between the leaders and laggards, the categorization of each country is actually variable on a case-by-case basis (see for example Weale et al. 2000, 94-95). A quantity, large-N study on the environmental leader-laggard countries in the member states conducted by Knill et al. (2012, 36) is also supporting this common notion. This is also the starting point in this thesis: instead of automatically assuming some member states to be either “laggards” or “leaders,” the analysis starts with an open mind.

Lieberink and Andersen (1998) have studied the strategies used by ‘green’ member states. These “environmental pioneers” are having slightly different strategies to advance their policy preferences, and the authors have distinguished between four of them. These strategies should not be taken as static as a country may change its strategy over time. Moreover, in practice the strategy may be a combination of two or more (Lieberink & Andersen 1998). This classification is also used in this thesis to characterize the pusher action of Austria. This table “presents a scheme according to which a member state can act as a ‘pioneer’ in principally four different ways, with varying emphasis on the aspects of being a forerunner and a pusher” (Lieberink and Andersen 1998, 256).

Table 1: Strategies of influencing EU environmental policy		
<b>Forerunner:</b>	Purposeful	Incremental
<b>Pusher:</b>		
<i>Direct</i>	a) Pusher-by-example	b) Constructive pusher
<i>Indirect</i>	c) Defensive	d) Opt-outer

Source: Liefferink and Andersen (1998, 256.)

In this classification, a ‘forerunner’ is defined “as a member state which is ‘ahead’ of EU environmental policy in the sense of having more developed and more advanced policies with a higher level of protection” (Liefferink and Andersen 1998, 256). The table makes a distinction between forerunner policies developed which are “a more incremental, historical process” and those which have been “adapted more purposefully with an eye to the EU policy-making process” (ibid). The first “pusher type” on the table, ‘pusher by example’ is an actor that engages into unilateral action to influence EU environmental policy-making (ibid.) A good example of this includes Denmark’s decision to introduce a CO<sub>2</sub> tax, the idea behind it being a push for an EU-wide CO<sub>2</sub> tax (Andersen and Liefferink 1996, 114-115).

The second type of forerunner (b) has achieved its position incrementally without considering the EU process and oftentimes principally for domestic reasons. Yet this type of member state might still seek to push for stricter environmental standards by forming coalitions either with the Commission’s experts or the other member states. As in the table, this type of strategy can be characterized as a “constructive pusher,” since the country using this strategy is “oriented towards finding a compromise, possibly at the expense of slightly lower EU standards than domestic ones” (Liefferink and Andersen 1998, 256-257). As an example, Andersen and Liefferink give the influence exercised by Germany, Denmark and the Netherlands in regards to the ambitious level of waste water treatment that was decided in the urban waste water directive. The decision made in the directive followed to a great extent the standards already achieved in these countries years ago (Liefferink and Andersen 1998, 257).

The third strategy is defined as “defensive forerunner” since the member state is first and foremost interested in protecting its own environment, rather than the environment of the EU as a whole. The position has been adopted intentionally, yet the “pushing” of EU policy-making is not done as directly. A member state using the strategy is not aiming at presenting its own model as something that the EU as a whole should adopt. Instead, oftentimes a pushing effect is due to the EU’s

interference in other policy areas, mostly common market policy. Still, the implications for the EU can be significant (Liefferink & Andersen 1996, 114-115).

The fourth strategy is an “opt-outer”. In this strategy, a member state pressures the EU environmental policy indirectly, and a country reaches the forerunner position through incremental steps. Common to this category and the latter one, conflicting rules of internal markets and domestic environmental standards are resulting in a pushing action of a member state. However, the difference is that the domestic standards prove to conflict with the rules governing the internal market unpredictably for the country which may make the country to ‘opt out’ (Liefferink and Andersen 1998, 257).

### *2.2.2 The Commission*

The Commission is one of the supranational institutions of the EU, along with the Parliament and the Court of Justice. At first sight, the Commission might look like the “government” of the European Union. However, the Commission is more of a hybrid between a government and a civil service as the Council also has a governmental role. The Commission is headed by a President and it consists of 27 commissioners, one from each country. Each of the commissioners have a specific policy jurisdiction (or portfolio) which range from competition to trade, economic and monetary affairs, the environment, transport and enlargement (Gallagher et al. 2011, 121-125).

The Commission has a long list of different responsibilities. Its tasks are to suggest policy ideas for the medium-term development of the Union, make initiatives for new legislation and act as an arbitrator in the legislative processes. The tasks also include managing the EU budget and overseeing the implementation of the primary treaty articles and secondary legislation. In addition, the Commission is a representative of the EU in bilateral and multilateral trade negotiations (Hix 2011, 34). To execute these tasks, the Commission is organized in a manner that resembles domestic governments. The Commission has a core executive (the College of the Commissioners) that concentrates on the political tasks; a bureaucracy (directorates-general) that is responsible for drafting the legislation, administrative work and certain regulatory tasks; and a network of quasi-autonomous agencies which take care of an array of monitoring and regulatory tasks (Hix 2011, 34).

The College of Commissioners seek to make decisions by consensus, but it is possible for Commissioners to request a vote. Even though a Commissioner would lose a vote, he or she must fall in line of the majority in the outer world. Put simply, as in most cabinet government systems, the

Commissioners need to follow the principle of ‘collective responsibility’ for the decisions that are made. In this respect, and due to the allocation of a portfolio to each Commissioner, the functioning of the Commission is similar to the cabinet government systems in the national level (Hix 2011, 35). Indeed, the Commission possesses many characteristics of a supranational “government” and the member states have delegated important tasks for it. Next, it is time to assess the Commission’s relationship to environmental affairs.

### *The Commission and environment*

The Commission has a broad range of functions in the environmental policy sphere and it is engaged with environmental governance in numerous ways. As put by Weale et al. (2000, 87), “As an agenda-setter, the consensus-builder, manager, and the formal initiator of legislation, its presence is largely taken as a given at all stages in the European environmental policy process”. Since 1973, the Commission has sought to create a coherent environmental policy (Schön-Quinlivan 2014, 106) yet it has been said that the Commission has not been successful in creating one, as the environmental policy-making is still fairly incoherent (Peterson and Blomberg 1999). Another problem that the Commission has faced in the environmental policy sphere is the poor implementation level of the environmental policies (Schön-Quinlivan 2014, 109).

As explained earlier, the Commission consists of twenty-four directorate-generals (DGs), that to some extent, are similar to national ministries. The DG that has the responsibility to draft environmental legislation and implementation of policy is DG XI. This DG is separated to directorates that deal with general and international affairs, environment, nuclear safety and civil protection, and environmental quality and natural resources. Compared to other DGs, it is pretty small and it has a special character within the Commission. Still, seen by many as an advocate of environmental matters or “science” DG, its leadership throughout the years has by purpose sought to “mainstream” the institution (Weale et al. 2000, 89). The DG was set up in 1973 but it did not gain a full Directorate-General status until 1981 and it played a marginal role within the Commission for a quite some time (Schön-Quinlivan 2014, 104-106).

### ***2.2.3 The European Parliament***

At first, the Parliament's role was described as "a mere talking shop" but these days it is on equal footing with the Council in most of the decision-making situations. For much of its history, it was relatively weak. But since the first direct elections in 1979, its powers and status have grown with remarkable speed, culminating in the changes agreed upon the Lisbon Treaty (Shackleton 2012, 124). The European Parliament's powers fall into three key areas; it enjoys considerable influence in relation to the EU Budget; it has the right to scrutinize, appoint, and dismiss the Commission; and in the context of EU law-making, the Parliament also has the right to amend and reject Commission proposals for legislation (Gallagher 2011, 1). The Parliament is the EU's only directly elected institution and the empowerment of it has been a way to reduce a democratic deficit of the EU.

The Parliament is organized into political groups. The groups that are most important are the center-right European People's Party (EPP), the center-right Progressive Alliance of European Socialists and Democrats (S&D) and the liberal Alliance of Liberals and Democrats for Europe (ALDE), as they possess the most seats in the Parliament. Other smaller groups comprise of the Greens, GUE-NGL, far-right and 'Eurosceptic' or nationalist MEPs. As time has passed, the groups have become more important and the majority of MEPs vote along their party line, rather than national (Hix et al. 2007). However, the political parties are slightly less cohesive as they are in the national level, but a bit more so than for instance their counterparts in the US Congress (Gallagher 2011, 130).

In addition, according to Burns (2013, 162), the groups play a crucial role as they "control appointments to positions of responsibility and set the EP's calendar and agenda". The importance of the groups is highlighted by the fact that the non-attached members of the Parliament end up being pretty powerless: these members hardly get a chance to be responsible for writing an important report or hold a significant position within the Parliament (Corbett et al. 2011, 78). However, much of the actual work of the Parliament is carried out in its twenty specialist committees (Gallagher 2011, 130) and the Parliament has been frequently described as "an institution composed of strong committees and weak parties" (Burns 2013, 165).

### ***The European Parliament and the environment***

The European Parliament has both perceived itself and has also been seen by others as the defender of environmental interests. There are many reasons behind the reputation of the European Parliament

as the defender of environmental issues. Much of the reputation is largely due to the work of Environment Committee, which is also the Committee having one of the heaviest workloads of any Parliament committee (see for example Weale et al. 2000, 91-92). The landmark piece of EP's role in environmental policy in the EU is a paper by David Judge published in 1992. In the paper, Judge assesses the impact of the EP on environmental policy in the EC and reveals that the impact of the EP has been variable (Judge 1992). The heavy workload has also given it a high profile. The committee is not solely dealing with environmental issues, but it is also responsible for issues related to public health and food safety. With 64 members, the committee is one of the largest committees (Burns 2013, 132-151).

The committee's leaders have also contributed to the notion. The Committee was led by Ken Collins, UK Labor MEP, from 1979 and 1999. During that time, he crafted a formidable reputation for himself and the committee as leading entrepreneurs in the field of environmental policy. From 1999 to 2004, the leader of the committee changed to Caroline Jackson, who is a conservative MEP also from the UK. The reputation of the EP as an 'environmental champion' was maintained during that time. However, after 2009, the committee was led by Miroslav Ouzký, a member of the Czech Civic Democrats. During his tenure as chair, the reputation of the committee as being a key environmental actor felt into abeyance (Burns 2013, 132-151).

However, there have also been other reasons behind the success of the committee. Secondly, the Committee has been able to develop close relations with its partner institutions, especially with DG XI (Weale et al. 2000, 92). Thirdly, the Committee is also the place where the Parliament's Green MEPs, to the extent to which they have been able to act as a unified group, have sought to advance their views. Fourthly, many members of the Committee have initiated their own expert reports into environmental issues, and the Environment Committee has embarked on a great many more own-initiative reports than most other committees (Weale et al. 2000, 92).

The changes that have taken place in the European Union in the 2000s have likely eroded the role of the EP as the defender of these interests. For instance, there has been a shift in norms of decision-making, the Parliament's ideological composition has changed, and many eastern European countries have joined the EU (Burns 2013, 132-151).

The approach that is taken here is to look into the ways that these institutions are aiming to change this directive. In the article "Is Co-decision Good for the Environment? – An Analysis of the European Parliaments Green Credentials" Burns and Carter (2010, 129) use an environmental ambition typology to classify the Parliament's amendment's environmental ambition. The typology consists of

five different classifications: a negative impact, a neutral impact, a marginal impact, a weak ecological modernization and a strong ecological modernization. This typology is also used in this thesis.

Classification	Meaning
Negative impact	Overall negative impact on the environment – normally a derogation.
Neutral impact	No discernible impact, negative or positive, on the environment – normally an editorial or technical amendment.
A marginal impact	Makes rhetorical commitment to environmental goals, paying lip service to key concepts. Vague commitments and promises. Limited environmental impact and imposes only minor costs on industry or consumers.
A weak ecological modernization	Implements weak versions of a coherent ecological modernization strategy. Establishes formal methods of achieving policy integration or applying the precautionary principle. Imposes or tightens deliverable targets, standards or timescales. May apply ‘new’ policy instruments and impose some costs.
A strong ecological modernization	Applies principles such as binding policy integration, the legal application of the precautionary principle or the use of the polluter pays principle. Makes commitments to international environmental agreements. Adopts stringent targets, standards and timescales, backed by extensive monitoring systems and sanctions. May require extensive reform of political and economic institutions, including significant democratization of institutions and mechanisms.

Source: Burns and Carter (2010, 129).

#### ***2.2.4. Co-decision procedure***

The co-decision procedure has become the primary decision-making procedure in the European Union. Under the procedure, all legislation adopted needs to be approved by both the Council of the European Union and the European Parliament. A Conciliation Committee is held in case the two parties are unable to approve legislation, like defined in the Consolidated Version of the Treaty on the Functioning of the European Union, article 294, hereinafter “TFEU”). The policy process studied in the thesis was also adopted under this procedure after two readings. Under the co-decision procedure and since the Parliament and the Council decide jointly, the EU works in a truly bicameral



fashion, such as on a national level (Corbett et al., 2003; Crombez, 2000; Tsebelis and Money, 1997). The procedure was first introduced in the Maastricht Treaty, and later the scope of legislation adopted under this procedure was extended to most policy areas; and today, most environmental legislation is adopted under this procedure (Burns & Carter 2010, 138). However, there are still significant policy areas in which the power rests on the hands of the member states. These notable exceptions are policy issues concerning economic and monetary union, which are still decided under the cooperation procedure (Phinnemore & McGowan 2010, 60). The co-decision has brought along some notable changes to the decision-making system of the EU and since it is the procedure under which the GMO directive studied here is created, a short overview to the debate is worth taking.

The introduction of the procedure resulted in a vivid debate over the Parliament's legislative powers under it. On the one hand, some scholars argued that the procedure had strengthened the Parliament's influence (Moser 1997a; Scully 1997), while others argued the contrary (Steunenberg 1994; Tsebelis and Garrett 1996). Tsebelis with his collaborators have argued that the net effect of the co-decision procedure has not been a positive one regardless of the Parliament's right of absolute veto mainly because the Parliament has lost its conditional agenda-setting power that it had under the co-operation procedure (Tsebelis 1994, 1996, 1997; Tsebelis and Garrett 1997, 2000; Garrett and Tsebelis 2001). Before, the Parliament made proposals, which once accepted by the Commission, were easier to the Council to accept than to modify. This was because in order to accept, reaching the qualified majority in the Council was sufficient, while to modify, the Council had to reach unanimity (Tsebelis 1994). This argument was criticized by other game theorists (Scully 1997; Moser 1997b; Crombez 1997, 2000a) as well as practitioners and other academics (Corbett 2000, 2001; Rittberger 2000). However, today, after the reform of the co-decision procedure, the widely accepted notion is that the co-decision has increased the EP's power compared to cooperation (e.g. see Crombez et al. 2006b; Hix 2002).

According to Rasmussen (2012, 747), the changes that the co-decision procedure brought along "have affected the balance of power between the EU institutions and internal decision-making within these institutions in a fundamental way". Even though the Parliament and the Council would not act as equal co-legislators in practice, after introducing the procedure, the EU has started to function in a more bicameral fashion, meaning that the Council needs to consider the EP's views much more than before (ibid). The procedure has clearly empowered the Parliament, and made the Parliament more than "a mere talking shop" as its earlier role has been described in the EU literature numerous times.

As the time passed on, the focus of academic discussion shifted from the relative influence of the Parliament in different legislative procedures to the relative distribution of power between the institutions within this new procedure (Rasmussen 2012, 740). Empirical work has not provided clear

findings on the relative strength of the institutions. There are a number of policy cases that demonstrate the Parliament's success in the co-decision procedure (Rasmussen 2012, 741.) A great example is the Working Time Directive for the road transport sector, 1998/0319/COD (The Commission 1999). In this case, the EP managed to broaden the scope of the directive, to not only cover drivers working for freight companies but also self-employed drivers, regardless of strong opposition coming on the behalf of a few member states (Rasmussen 2012, 741). To Corbett et al. (2007), this demonstrated the EP's success under co-decision procedure, and made them explicitly comment that "there is little question that without co-decision it would have been impossible to overcome such opposition and to reach an agreement with the Council as a whole".

Quantitative research has not provided clear answers to the question of the relative strength of the institutions. In their empirical analysis, "Who wins," König et al. (2007) show how in the conciliation processes the EP is the winner more often than the Council. However, the Council succeeded more often in disputes that involve multiple issue dimensions. (König et al. 2007.) Then again in Miller's study that was conducted quickly after the conciliation had entered into force, it demonstrated that in 46 percent of the first 26 cases, the text that came out from the conciliation committee was considerably closer to that of the Council's common position. Only in 23 percent of cases was it closer to the position of the Parliament and in 31 percent, the text reflected clearly the joint position of the two institutions (Miller 1995). More recent studies, such as a study by Mariotto and Franchino (2011) of the 175 conciliation committee joint texts since Maastricht indicate that even if the co-decision has diminished the advantage experienced by the Council, these texts are still closer to the prior positions of the Council than the Parliament.

Costello and Thomson (2013, 1025) have also studied the distribution of power between the institutions. Their aim was to assess how the co-decision works in practice, by "using data on the preferences of legislative actors on a large number of proposals negotiated between 1999 and 2009". The findings of their analysis suggested that the Parliament has gained power at the expense of the Commission and that the Parliament has indeed gained power in relation to the Council. However, the Council still enjoys more power since it has certain "bargaining advantages over the EP" and thus, the Parliament is not still in practice on equal footing with the Council. The Council has this "bargaining advantage" in situations where its position is closer to status quo than that of Parliament's, which is very often the case. In addition, internal divisions within the Parliament are influencing its position in the bargaining negatively, whereas divisions within the Council are not weakening it. This, Costello and Thomson (2013, 1037) explain by the publicity of the Parliament's

committee meetings and votes: if the divisions exist, the Council will know and this information can be used to their benefit.

In the EU literature, the role of the Commission after the introduction of the co-decision procedure has not gained as much attention as the roles of the other two legislative institutions. In general, it is believed that the Commission is in the procedure in a weaker position in comparison to the others. Even though it sets out the proposal, both the EP and the Council can amend it, and at the end, the Council and the Parliament make the final decision without needing approval of the Commission. Interestingly, some scholars have even argued that the Commission does not possess any power at all (e.g. Crombez 1996; Tsebelis and Garrett 2000), yet others have claimed that the Commission may have an effect in regards to the outcome, however, mainly as the role of an informal mediator between the institutions (Rasmussen 2003, 2011). In this thesis, the basic assumption is closer to the latter one: it is assumed that even under the co-decision procedure, supranational institutions, including the Commission, may have a causal effect.

According to Rasmussen, at first the scholars did not pay much attention to the internal workings within the institutions after the introduction of the co-decision procedure, but instead, treated them more as unitary actors (Rasmussen 2012, 742-743). Later studies have showed, however, that using the co-decision procedure has had implications not only to the relations between the institutions, but also within the institutions. Various studies have provided information on what concluding at different stages of the procedure had meant for the relative distribution of power among the actors inside the institutions. Since the Amsterdam Treaty enabled reconciling the deal at first reading, the visible trend has been broadening the use of this option to an increasing number of cases (Rasmussen 2012, 743). For example, the study by Toshkov and Rasmussen (2012) showed how from the 899 co-decision cases that were handled in the fifth and sixth Parliaments, early agreements made between 41 % and 57% of all co-decisions files agreed on between the years 2005 and July 2009.

Scholars have studied, what changes these early agreements had brought along. Farrell and Héritier (2004) claim that the opportunity of reaching these “early agreements” has increased the power of certain actors within the institutions while weakening others. In practice, this has meant that actors with “formal negotiation authority” and actors within the legislative bodies that have networking skills, policy expertise and political support have benefitted. In the case of the Parliament, this has meant that bigger political groups and the rapporteurs have become more influential, whereas small political groups and the chairmen of the standing committees have lost power (Farrell and Héritier 2004). However, in a more recent study, Rasmussen and Reh (2013) have shown how there is no intra-institutional power shift to the rapporteurs in the early agreements.

Scholars have also studied the power relations within the legislative bodies in the co-decision and other legislative procedures. Yordanova (2011) has shown that there is a systematic difference between co-decision and consultation when it comes to getting the rapporteurships. Interestingly, the author claims that in co-decisions, politicians from the center-right majority coalition and loyal party group members are preferred over others. The policy process studied here is not making any exception: both times the rapporteurs are coming from center-right parties. When it comes to the Council, Häge (2011) has found that different actors repeatedly take the decisions under co-decision and consultation. Even when the importance of the dossier is controlled, the decisions are more likely to be reached at ministerial level under co-decision than consultation. Häge (2011) explains this finding by increased politicization in the Council decision-making under co-decision. The increased politicization is why the bureaucrats let the issues be solved at the ministerial level.

Serving as importance to my thesis, Burns and Carter (2010, 139) have asked if the co-decision has empowered the Parliament, and as the Parliament is known for being “an environmental champion”, has the co-decision been good for the environment? Their conclusion is that there is “no strong evidence that increases in the legislative power of this so-called environmental champion has resulted in a greener legislative output”. Their study showed that the introduction of the co-decision procedure has changed both the behavior of the Parliament, as well as the Council, and the Parliament has become more successful in getting its amendments adopted, at least in some form. Although additional amendments are adopted in quantitative terms, they are not necessarily “matched by environmental quality” (ibid).

The literature on the effects of co-decision procedure is vast, and not everything can be covered in this part. What can be concluded is that the co-decision procedure has clearly affected both inter- and intra-institutional relations in numerous ways, some of which to be discovered. Even though there is still an ongoing discussion on whether the Parliament is on an equal footing with the Council in the procedure, there is a vast consensus that the Parliament is clearly much more influential than it was previously under other legislative procedures (see for example Rasmussen 2012, 747), and that the co-decision procedure has more or less weakened the Commission.

The co-decision procedure consists of various steps. The Council and the Parliament can reach an agreement on the first, second or third readings (Rasmussen 2012, 737). In the case studied here, two readings were required before the legislative bodies reached an agreement. The procedure is explained in the article 294 in the consolidated version of the Treaty on the Functioning of the European Union. The procedure can be summarized as follows (TFEU, article 294):

- The Commission submits a proposal to the European Parliament and the Council
- The European Parliament adopts its position at first reading and informs it to the Council.
- The Council has two choices: either it can approve the Parliament's position or reject it.
  - a. In case the Council approves the Parliament's position, the act is adopted in the wording of the position of the Parliament.
  - b. In case the Council decides to reject, it must adopt its position at first reading and inform the Parliament. The Council needs to comprehensively inform the Parliament of the reasons which led it to adopt its own position at first reading. The Commission needs to clearly communicate the Council's position to the Parliament.
- The Parliament has three choices: it can approve, reject or propose amendments.
  - a. In case the Parliament approves the Council's position at first reading or does not take a decision, the act is adopted in the wording of the position of the Council.
  - b. In case the Parliament rejects the Council's position at first reading, the proposed act is not adopted. To reject, the Parliament needs the majority of its component members.
  - c. In case the Parliament proposes amendments to the Council's position at first reading, the amended text needs to be forwarded both the Council and the Commission, which need to give their opinion on the amendments. Again, the Parliament needs the majority of its component members to propose amendments.
- The Council needs to act within three months of receiving the Parliament's amendments. It needs to reach a qualified majority and either approve or reject the amendments.
  - a. In case the Council approves all the amendments, the act is adopted.
  - b. In case the Council rejects the amendments, the President of the Council in the agreement with the President of the European Parliament, need to summon a meeting of the Conciliation Committee within six weeks.
- The Council's action on the amendments on which the Commission has conveyed a negative opinion needs to be unanimous.

The Conciliation Committee that is convened at this point operates under certain rules.

- The Committee consists of either the members of the Council themselves or their representatives. The same number of members need to represent the Parliament. The representatives have a task to reach an agreement on a joint text. The representatives of the Council need to agree by a qualified majority of the members whereas the representatives of the Parliament need the majority of the members. The agreement

needs to happen within six weeks after the Committee has summoned together. The negotiations are based on the positions of the Parliament and the Council at second reading.

### **3.Theoretical framework**

#### **3.1 Theories of the decision-making in the EU**

In sum, the focus of this study is the policy process that led to the creation of the GMO Directive. More precisely, the interest lies in the role that the EU institutions played in the process. Therefore, the choices made regarding the theoretical framework are reflecting this interest. On the course of European integration, scholars have created a great variety of approaches for studying decision-making in the European Union.

The best suited one for the purpose of this study is new institutionalism, which enables one to regard institutions as significant political actors of their own right, instead of treating them as impartial “black boxes”, or mediators, which turn the interests of others into political outcomes. Nevertheless, one should not make a mistake of overestimating the role of institutions through assuming that they have a stronger impact on the process than they in fact have. The term "new institutionalism" is used here as an umbrella term, covering different approaches which emphasize the role of institutions. However, approaches differ widely when it comes to the definition of “institutions” and how in fact institutions matter. The specific approach applied in the research is explained in detail at a later stage. However, firstly, I will provide a short overview of other theories related to EU decision-making.

In this section, a short overview is made to the approaches used in the past to study decision-making in the European Union. At first, it was thought that the most pressing questions about the EU could be answered with integration theories, even the ones concerning decision-making. Already back then, theorists of European integration of the school of neo-functionalism believed that the EU institutions have interests, which they sought to pursue in actual decision-making situations. Neofunctionalists argued that supranational institutions were having a significant causal role in European integration (see for example Haas 1958, Lindberg 1963) whereas intergovernmentalists (see for example Hoffman 1966; Moravcsik 1999) generally denied any significant causal effect for them. These two schools of thought have not only been the most influential attempts to theorize the development in Europe during the last century, the process called European integration, but also the first theories dealing with decision-making in the European Union.

Neofunctionalists explained integration as a spillover process. At first, two or more countries agree to work for integration in a certain sector, such as coal and steel. In order to accomplish this task more

efficiently, they agree to appoint a supranational bureaucracy - a 'high authority' to use the parlance of the time - to oversee operations. While the integration of a sector achieves some of the supposed benefits, the full advantage of integration will not be achieved unless related economic sectors are also drawing into the integrative web. Neo-functionalists predicted that over time, sectoral integration would produce the unintended and unforeseen consequence of promoting further integration in additional issue areas (see Haas 1961 and Lindberg 1963).

While it is clear that co-operation in one policy area leads into pressure to co-operate in additional issue areas, the history has shown examples of situations in which the member states have powerfully shown the limits of the policy areas in which they want to co-operate. For instance, in the field of energy policy, which is closely linked with economic activity and environmental issues, two highly Europeanized policy fields are fairly non-Europeanized regardless of the pressures. Energy policy issues touch strongly upon issues such as national security and have avoided the strong inferences from the side of the European Union. However, the field of environmental policy has been fairly Europeanized, surprisingly to many.

Neofunctionalism was the first influential attempt to explain European integration. A response to criticism of neofunctionalism came in the form of intergovernmentalism. Intergovernmentalists believe that the nation-states have a greater role in the process of integration in comparison to the perspective of neofunctionalists. The approach is drawing on realism which is the school of international relations that stresses that nation-states are the most important actors in international politics. For neo-realists, EU decision-making is 'the practice of ordinary diplomacy' although 'under conditions creating unusual opportunities for providing collective goods through highly institutionalized exchange' (Pierson 1996, 124). Thus, the European Union is only as powerful as its Member States wish it to be (Peterson & Bomberg 1999, 7). As seen in energy and environmental policy fields, regardless of the pressure from the European Union side and the 'spill-over' effect, the member states of the European Union have been able to choose if they wish to enhance co-operation or not.

The main claim of intergovernmentalists is that pace and nature of integration are ultimately determined by national governments pursuing national interest; and the nations have the political legitimacy that comes from being democratically elected. Like Stanley Hoffman (1966) has stated: the nation-state far from being 'obsolete,' had proven 'obstinate'. Andrew Moravcsik built upon the ideas of Hoffman, accepting many of the key ideas of intergovernmentalism, however, he took the analysis further in his liberal intergovernmentalist approach. He offers a model of a two-level game to explain European integration, consisting both of a liberal theory of national preference formation



and an intergovernmentalist account of strategic bargaining between states (see for example Moravcsik 1999).

The reality proved the claims of neofunctionalists wrong. The Empty Chair Crisis in 1960s showed that the power of the member states and the integration did not go further as neofunctionalists had predicted. As put by Rosamond (2000, 50), “there may not be many ‘fundamentalist’ neofunctionalists around” but there are many who use features of the neofunctionalist thinking. As in this thesis, some features of the neofunctionalist thinking are present. The causal role of the supranational institutions in the decision-making is accepted, yet within the limits set by the member states, and it is also accepted that the supranational institutions may have their own preferences. However, such features of the neofunctionalist thinking, as shift of loyalty from the national level to the supranational level, is nowadays completely disregarded.

Although the principal-agent model in the study of the European Union is drawing from economics and is not originally developed within the realm of political science, features of both intergovernmentalism and neofunctionalism are present to some extent. While it is acknowledged that the power rests in the hands of the member states (since member states have the control mechanisms to control the agency of supranational institutions), the assumption also is that supranational institutions are having preferences distinct from those of their principals that they may pursue in actual decision-making situations.

Traditional theories of integration have provided interesting insights from which some have proved to be more accurate than others. However, as Elizabeth Bomberg and John Peterson (1999, 6-9) have pointed out, these approaches are good theoretical tools in the area of the “big” decisions and history-making of the EU, whereas they do not suit the analysis of the EU’s inner processes. The shift in the academic focus from explaining the integration process to understanding the European Union as a political system happened in the 1990s. The new way of thinking can be traced back to the statement of Simon Hix, when he called for scholars of the discipline to study the EU with their established concepts before solely studying public policy and international relations (Hix 1994).

One of the new approaches to study decision-making in the European Union is a policy network analysis. The strength of the approach is that it acknowledges the influence of various actors and by doing so, it probably provides a fairly realistic, nuanced picture of the decision-making process in one particular policy sub-field. The term ‘policy network’ connotes “a cluster of actors, each of which has an interest, or ‘stake’ in a given... policy sector and the capacity to help determine policy success failure” (Peterson & Bomberg 1999, 8). As Peterson puts it, “analysts of modern governance

frequently seek to explain policy outcomes by investigating how networks, which facilitate bargaining between stakeholders over policy design and detail, are structured in a particular sector” (Peterson 2009, 105). Unlike the principal-agent approach applied in this study, the policy network analysis studies a larger cluster of actors. By doing that it gives a more holistic picture of how a certain outcome is reached, taking account the influence of other actors, rather than solely EU institutions.

However, the policy networks analysis has never been short of critics. It has been criticized based on three main things. First, critics have argued that ‘policy network’ may be a useful metaphor, but it does not constitute a model or theory. Secondly, policy network analysis lacks a theory of power. Thirdly and finally, the literature on policy networks is often vague and caught up with insular, and purely academic debates about terminology. Overall, policy network analysis is still not a “leading theoretical approach” in the same league as institutionalism, intergovernmentalism and constructivism (Cowles and Curtis 2004, 305). In contrast to policy network analysis, the principal-agent model provides a clear model, embedded in theory that may not take account of all the actors in the decision-making process but consider the influence of the most important ones. Taken the empirical evidence, an expectation that the institutions have certain preferences is justifiable.

In addition to these theories of decision-making presented here, one analytical concept which has gained popularity during recent years has been ‘multi-level governance’ which refers to a system in which power is shared among the supranational, national, sub-national and local levels, with considerable interaction among them (see Hooghe and Marks 2001). The approach has been used to study the EU environmental policy, for instance the climate and energy package of 2009 (see for example Boasson and Wettedstad 2013). The approach catches quite well the nature of the EU decision-making, in which different political levels are highly interlinked. As this policy question reveals the importance and interconnections of different policy levels, this approach could be a good analytical tool to understand the GMO policy of the EU. However, as it does not place enough emphasis on the EU institutions and the interaction between them, this analytical tool was ruled out. Next, it is time to make an overview of the chosen theoretical framework, namely new institutionalism, in which the focus is put on the institutions and the role they play in the decision-making process. Following this, a further exploration will be made of the one variant of the new institutionalism, the principal-agent model, as it is the main analytical tool used in this thesis.

### **3.2. New Institutionalism**

In the thesis, the principal-agent model provides the analytical lens for analysis. While the GMO directive enables the researcher to ask a myriad of different questions regarding such issues as politicization of science, the international obligations of the EU and interplay between the various levels from the grassroots level all the way up to the international level, this thesis provides an innovative way to look into this complex policy process, making sense of it by using the principal-agent model. The intriguing question is, how much explanatory power does this kind of rather simple, parsimonious model possess?

This section is mainly based on the much cited article by Hall and Taylor (1996), *Political Science and three new institutionalisms*. As mentioned earlier, new institutionalism is a theoretical approach in political science which emphasizes the role of institutions. However, given the diverse disciplinary starting points, it is perhaps disingenuous to talk about new institutionalism as a movement (Rosamond 2000). Instead, it consists of at least three different theoretical approaches, each of which calling itself ‘a new institutionalism’ (Hall & Taylor 1996). Some have even distinguished between seven different varieties of new institutionalism (Peters 2007), while others, such as Armstrong and Bulmer have solely distinguished between historical and rational choice variants (Armstrong & Bulmer 1998). In this thesis, I am only presenting historical, sociological and rational-choice institutionalism.

These three forms of institutionalism developed in reaction to the behavioral perspectives that were influential during the 1960s and 1970s (Hall & Taylor 1996) but also during the growing ascendancy of rational choice theory in subsequent decades (Hay 2002, 10). Another reason for the growing interest in new institutionalism, or the impetus for it, was the concern that political scientists had neglected for a quite some time how important the state is as a shaper of outcomes (Evans et al. 1985).

Today, it is conventional to see political science characterized by these three distinctive perspectives – rational choice theory, behaviouralism and new institutionalism. New institutionalism differs from these first two in two key respects. Firstly, it questions the assumed regularity in human behavior on which rests behaviouralism’s reliance on a logic of extrapolation and generalization (or induction). Instead, new institutionalism suggests more complex and plausible assumptions. Secondly, it abandons the simplifying assumption which makes the rational choice theory’s modelling of political behavior possible (Hay 2002).

The main idea behind the rational choice theory is that political actors are instrumental, self-serving, and utility-maximizers. Theory is drawing from neo-classical economics and trying to import the rigor and predictive power of neo-classical economics into political science. It seeks to construct stylized (and often mathematical) models of political conduct by assuming that individuals are rational and behave as if they engage in a cost-benefit analysis of each and every choice available to them before choosing the option which is most likely to maximize their material self-interest. The purpose of the theory is to produce a deductive science of the political on the basis of a series of simplifying assumptions (Hay 2002, 7-10.)

Unlike the approach I am applying, the interest lies in preferences and actions of individual actors instead of institutions. For instance, the classical example is the so-called 'tragedy of commons,' identified by Garrett Hardin (1968) which focuses on the individual actors that act in their own self-interest and exploit the natural resources that eventually leads to environmental degradation. Even though it would be for the common good to handle the resources wisely, the actors are not willing to limit their own actions if they are not sure that others will too. In situations like this, individual rationality can translate into collective irrationality.

Like rational choice theory, behaviouralism also aims to predict political behavior. However, it bases predictions on extrapolation and generalization from observed empirical regularities instead of on the deduction of testable hypotheses from simplifying assumptions about human nature. Behaviouralism aims at developing an inductive approach to political science, allowing it to generate predictive hypotheses on the basis of the quantitative analysis of human behavior at an aggregate level (Hay 2002, 10).

New institutionalism has four key assumptions. The first is that 'institutions matter' and political conduct is shaped profoundly by the institutional context in which it occurs and acquires significance. Secondly, 'history matters' and the legacy that the past bequeaths to the present is considerable. Thirdly, political systems are complex and inherently unpredictable. Fourthly, actors do not always behave instrumentally in a pursuit of material self-interest (Hay 2002, 14).

Armstrong and Bulmer argue that the NI approach offers powerful diagnostic tools for understanding systemic level EU decision-making (Armstrong & Bulmer 1998). Further, new institutionalist analysis of the EU reveals that the Union's common institutions are often more than mere arbiters in the decision-making process but being instead key players in their own right (Bomberg & Peterson 1999). As Rosamond puts it, new institutionalism gives us a whole new way to look into the decision-making in the European Union (Rosamond 2000, 115).

As pointed out earlier, different approaches in new institutionalism developed in parallel, in addition to historical institutionalism. Unlike in other approaches, the roots of historical institutionalism are in group theories of politics and structural-functionalism. These approaches from which historical institutionalism is drawing from were prominent approaches in political science during the 1960s and 1970s. More precisely, historical institutionalism developed in response to these two, borrowing from both but aspiring to go beyond them (Hall & Taylor 1996, 937).

All the different institutionalist approaches define institutions in different ways. Historical institutionalists define them as the formal or informal procedures, routines, norms and conventions embedded in the organizational structure of the polity or political economy. These can range from the rules of a constitutional order of the standard operating procedures of a bureaucracy to the conventions governing trade union behavior and bank-firm relations (Hall & Taylor 1996, 938).

When compared to the other two approaches, historical institutionalism differs in four key respects. Firstly, historical institutionalists tend to conceptualize the relationship between institutions and individual behavior in relatively broad terms. Secondly, they emphasize the asymmetries of power associated with the operation and development of institutions. Thirdly, they tend to have a view of institutional development that emphasizes path dependence and unintended consequences. Fourthly, they are especially concerned with integrating institutional analysis with the contribution that other kinds of factors, such as ideas, can make to political outcomes. In general, historical institutionalists associate institutions with organizations and the rules or conventions promulgated by formal organization (Hall & Taylor 1996, 938).

Historical institutionalists believed that the institutional organization of the polity or political economy as the principal actor in structuring collective behavior and generating distinctive outcomes. Historical institutionalists started to look more closely at the state, which was seen “no longer as a neutral broker among competing interests but as a complex of institutions capable of structuring the character and outcomes of group conflict” (Hall & Taylor 1996, 937-938). Not long after these early analyses, scholars of this school of thought begin to study how other social and political institutions, especially those linked with labor and capital, “could structure interactions so as to generate distinctive national trajectories” (Hall and Taylor 1996, 938).

Historical institutionalism has been used as an approach in explaining environmental policy-making in the European Union. In the book, “EU Climate Policy,” Boasson and Wætestad (2013) use both approaches - sociological and historical institutionalism to explain the decision-making processes

related to the climate and energy package of 2008. Whereas Burns (2012) used the historical institutionalist analysis to explain EU's biotechnology policy.

Sociological institutionalism arose primarily within the subfield of organization theory. New institutionalists in sociology began to argue that many of the institutional forms and procedures used by modern organizations were not adopted simply because they were most efficient for the tasks at hand, in line with some transcendent 'rationality.' Instead, they argue that many of these forms and procedures used by modern organizations should be seen as culturally-specific practices (Hall & Taylor 1996).

What are the characteristics of sociological institutionalism? First of all, in this approach, the term "institution" is defined more broadly than political scientists normally do, including not just formal rules, procedures or norms, but also the symbol systems, cognitive scripts, and moral templates. Second of all, new institutionalists in sociology have a distinctive understanding of the relationship between institutions and individual action, which follow the 'cultural approach' (yet displaying some characteristic nuances). In the older line of sociological analysis, individuals who have been socialized into particular institutional roles internalize the norms associated with these roles. Further, many sociological institutionalists emphasize the highly-interactive and mutually-constitutive character of the relationship between institutions and individual action.

Thirdly and finally, the new institutionalists in sociology also take a distinctive approach to the problem of explaining how institutional practices originate and change. Many rational choice institutionalists explain the development of an institution by reference to the efficiency with which it serves the material ends of those who accept it. On the contrary, sociological institutionalists argue that organizations often adopt a new institutional practice, not because it advances the means - ends efficiency of the organization, but because it enhances the social legitimacy of the organization or its participants. In other words, organizations embrace specific institutional forms or practices because the latter are widely valued within a broader cultural environment (Hall & Taylor 1996).

Originally, rational choice institutionalism arose from the study of American congressional behavior. To a large extent, it was inspired by the observation of a significant paradox - if conventional rational choice postulates are correct, it should be difficult to secure stable majorities for legislation in the US Congress where the multiple preference-orderings of legislators and multidimensional character of issues should lead to rapid 'cycling' from one bill to another as new majorities appear to overturn any bill that is passed. Yet congressional outcomes actually show considerable stability (Hall & Taylor 1996, 942-943).

According to Pollack, the current rational-choice literature on American political institutions can be traced to Kenneth Shepsle's pioneering work in which he has shed some light to the institutions influence in the US Congress. Starting with the observation, made by Richard McKelvey (1976) and William Riker (1980) among others, that in a majoritarian decision-making system policy choices are innately unstable 'cycling' among multiple possible equilibria, Shepsle argued in his study that Congressional institutions, and in particular the committee system, could produce 'structure-induced equilibrium' by ruling some alternative as permissible or impermissible and by structuring the voting and veto powers of various actors in the decision-making process. More recently, Shepsle and others have increasingly started to focus on the problem of 'equilibrium institutions', specifically, "how actors choose or design institutions to secure mutual gains, and how those institutions change or persist over time". (Pollack 2003, 5.)

According to Pollack, the innovation of Shepsle and the subsequent development of the rational-choice approach to Congressional institutions have produced a number of theoretical offshoots with potential applications in comparative as well as international politics. Although all these approaches were originally formulated and applied in the context of American political institutions, Pollack argues that these approaches are applicable in these other contexts. (Pollack 2003.) Naturally, this is also one of the assumptions behind this study as well, since the principal-agent model, applied by Pollack is being used as a main guiding model in this thesis and that model is drawing from these approaches used originally to study Congressional institutions.

Shepsle's innovation and the subsequent development of the rational-choice approach to Congressional institutions have produced a number of theoretical offshoots with potential applications in comparative as well as international politics. For example, Shepsle and others have examined in some detail the 'agenda-setting' power of the induced equilibrium, specifying the conditions under which agenda-setting committees could influence the outcomes of certain Congressional votes. Shepsle's 'distributive' model of Congressional committees has, however, been challenged by Keith Krehbiel and others scholars, who agree that committees possess agenda-power but argue that the committee system serves an 'informational' rather than distributive function by providing members with an incentive to acquire and share policy-relevant information with other members of Congress (Pollack 2003).

In another offshoot, students of the Congress have developed principal-agent models of Congressional delegation of authority to regulatory bureaucracies - and later to courts - and the efforts of Congress to control those bureaucracies. More recently, Epstein and O'Halloran (1994; 1999), b) and others have pioneered a 'transaction cost approach' to the design of political institutions, arguing

that legislators deliberately and systematically design political institutions to minimize the transaction costs associated with making public policy (Pollack 2003). Next, we will take a closer look at the model.

### **3.3 Mark A. Pollack's principal-agent analysis**

Principal-agent model was initially developed within the study of economics. In the 1970s, scholars within the new organizational economics created it in order to understand the contractual relationship “between two (or more) parties when one of these, designated by the agents, acts on behalf of or as a representative for the other, the principal” (Ross 1973, 134-139). It did not take long for political scientists to realize the usefulness of the approach to the study of politics. Throughout the last 30 years, the approach has been applied to various political science topics, like oversight function of the US Congress (Weingast & Moran 1983), national security (Downs & Rocke 1994) and the UN Secretary General (Johnstone 2003). The model has gained popularity during the years, and today it is in fact one of the prominent approaches to the study of delegation in American, comparative and international politics (Pollack 2007, 2). The EU scholars have also realized the usefulness of the approach to the study of the EU. Scholars have applied the model to study certain EU institutions or the relations between them, such as the EU Council Presidency (Tallberg 2003), the Parliament and the Court of Justice (Pollack 2003) and the relations between the European Council and the Commission (Bocquillon & Dobbels 2014), and to substantive areas of EU policy – for example the EU as a negotiator in the international environment negotiations (Delreux 2009) and risk regulation as relates to BSE crisis in the 1990's (Krapohl 2003).

This thesis is based on the work of Mark A. Pollack. Put simply, as in other principal-agent settings, the member governments of the EU decide to delegate power and discretion to the European Commission and the Court of Justice to increase efficiency, or to put more precisely, “decrease transaction costs” of EU decision-making. However, the delegation of power to the supranational level increases the risks that these “agents” seek to act upon their own preferences that are distinct from those of their principals. As the literature on the EU has shown, it has seemed that these supranational institutions are having preference for further integration and maximizing their own competence. Principals design and tailor a wide range of control mechanisms to limit this “agency discretion” and maximize the benefits of delegation across issue areas and over time (Pollack 2003, 19). Regardless of their general and common preference for greater integration, the preferences of



these supranational institutions are not identical. Their preferences reflect their differences in their institutional positions vis-à-vis the member governments and each other (Pollack 2003, 385).

Principal-agent models of delegation are built upon an assumption that agents have preferences distinct from those of their legislative principals, and if let free to ‘shirk,’ they will act on those preferences which in fact means that legislative outcomes move away from the original intent of the principals who created them. To illustrate it better, Pollack gives an example of the employer-employee relationship, in which this kind of “shirking” happens. In the employer-employee relationship, the employee as an agent is often presumed to want to maximize her income while minimizing the effort she puts into her job. In this situation, “shirking” is essentially synonymous with a lack of productivity among workers and can be controlled by using monitoring and sanctioning behavior or by using incentives to encourage workers to remain productive even when their behavior is not monitored. However, in the political relationship between a group of legislators and their agent, the problem is not the agents’ aversion to work but instead drifting from the principals’ collective preferences (Pollack 2003, 35).

The interesting question is why supranational organizations exhibit pro-integrationist or competence-maximizing preferences. For instance, one possible reason is socialization of new employees as they arrive within the Commission (cf. Mancini 1991) or simply bureaucratic politics (Peters 1992). Whatever reason behind these preferences, many scholars from competing theories have assumed that the Commission, Court and European Parliament have all pursued a broadly integrationist agenda throughout the history of the European Union (Pollack 2003, 36). In sum, the starting point of the analysis is as in Pollack’s study that the EU supranational agents act as unitary, rational, competence-maximizers and I am not elaborating much further the reasons behind the preferences possessed by them. Scholars have also given reasons for the EP’s preference for pro-environmental preferences, including the amount of green MEPS in the Environment Committee (Weale et al. 2000), but I will not elaborate further the reasons behind this preference in this study. All in all, for one reason or another, scholars have identified these institutions to possess these preferences and I am interested to find out whether these preferences of institutions and their way to act upon them is affecting decision-making.

However, the policy preferences institutions are having are not always competence-maximizing. For instance, in the case of US, the Environmental Protection Agency is typically considered to possess relatively ‘green’ preferences for a high level of environmental protection, and that it is trying to maximize these green preferences in policy terms within the limits set by a President and Congress whose commitment to environmental protection may fluctuate considerably over time (Pollack 2003,

35; Wood 1988). On the EU level, European Parliament has been claimed to have pro-environmental policy preferences. Different sources have claimed that it has both seen itself and also has been seen by others as the defender of environmental interests (Weale et al. 2000, 91). Burns et al. (2013) have also conducted an empirical study to test if this claim holds after the introduction of co-legislation procedure. Before it was claimed that also the Commission, and especially the DG ENV inside it, was “full of ecological freaks,” yet during the years, the DG ENV has become more “mainstreamed” (Weale et al. 2000).

Now we have decided to assume that supranational agents do indeed have a preference for ‘more Europe’ as Ross has summarized the competence maximizer preferences of the Commission and other supranational institutions. The next question is, under what conditions are those agents likely to act on those preferences rather than implementing strictly and faithfully the preferences of the member states that created and empowered them? As pointed out earlier, principals have created different kinds of mechanisms to control their agents. More precisely, usually administrative procedures are being set out - delegating authority to an agent, identifying the scope of delegation, the instruments available to the agent – regulation, economic incentives, direct provision of public goods, and so forth – and the procedures that the agent is required to follow in carrying out its delegated functions (Pollack 2003, 30). If all else is equal, the autonomy of an agent should be greatest when the scope of delegation is wide, the choice of instruments is broad, and the procedural requirements are minimal. On the contrary, the ability of a principal or principals to control agency behavior should be greatest where the scope of delegation and the range of available instruments is narrow and where the procedural requirements governing agency action are most detailed and constraining (Pollack 2003, 39-41).

“The principal agent turn” has made scholars reflect upon the flaws and merits of the model. Various EU scholars have justly questioned the image of the Commission and other supranational agents as unitary rational actors with a one-dimensional set of preferences defined in terms of more or less integration. For example, as Cram (1994) puts it, the literature of the Commission frequently begins by noting that the organization is in fact a ‘multi-organization,’ divided into a ‘political’ level composed of the Commissioners and their cabinets and ‘administrative’ level composed of an ever-changing number of Directorate-Generals (DGS), each of which having its own mission and organizational culture (Pollack 2003). Similar observations apply to the European Parliament, where partisan differences among members are central to the organization and shape its procedures (Pollack 2003). This is also being pointed out when referring to the European Parliament as a ‘pro-environmental actor’ – in fact, much of the reputation is largely due to the work of the Environment

Committee, which is also the committee having one of the heaviest workloads of any other Parliament committee (Weale et al. 2000, 92).

Kassim and Menon have also criticized the model for treating supranational institutions as unitary actors out in their critical overview of the principal-agent model and the deployment of the model by authors writing from four theoretical approaches. The first problem for them is the extent of which these approaches simplify the complexity of the EU. They argue that assuming either supranational institutions or member states being unitary actors is “extremely questionable” (Kassim & Menon 2003, 133). They continue that even though the level of analysis that is chosen by the authors whose work they assess might make the assumption appealing, still, “even as a convenient fiction it is problematic” (Kassim & Menon 2003, 133).

In a more recent contribution to this debate, Billiet, Hodson and Maher conclude that “the overarching finding of this symposium is that the principal-agent approach is highly salient for EU scholars, but that it must be handled with care” (Billiet, Hodson & Maher 2009, 412). While the writers agree that the model has a number of benefits, it also suffers from a few severe methodological limitations. In their opinion, the legal dimension of relationships between principals and agents is commonly “under-articulated” in studies of EU policy-making. Another concern for them is “the lack of criteria for choosing one specification of a principal-agent relationship over other conceivable alternatives – and the difficulties of identifying a specific explanation for agency slack in the presence of many possible explanations” (ibid.).

As Pollack puts it, it is unquestionably correct that the Commission is composed of hundreds of bureaucratic sub-units and individuals, each of which often has distinct policy preferences; and that the internal Commission politics is frequently depicted as a haven of bureaucratic politics and intra-organizational struggle. Nevertheless, the idea is whether these organizations behave with sufficient coherence vis-à-vis member governments and other organizations so that we can, for the purpose of analysis, treat them as unitary actors (Pollack 2003, 36). As Tsebelis and others have argued, in so far the Commission and Parliament “typically vote by simple majority with no restrictive rules for amendments, each agent can be represented simply in terms of the preferences of the median voter in each organization” (Pollack 2003, 37). In short, as Pollack argues in his book, for our purpose the question to be asked is not whether these supranational institutions are monolithic blocks with uniform preferences, but instead, whether they are generally behaving coherently and predictably according to a set of shared organizational preferences (Pollack 2003, 37). After this short overview to the relevant theories, approaches and relevant information on the decision-making in the EU, it is finally time to set out the hypotheses that are guiding the analysis.

### 3.4 Hypotheses

The hypotheses in this thesis are based on the EU literature, part of which is presented above. As already pointed out, the literature has provided convincing proof that the supranational institutions of the EU, including the Commission and the Parliament, have demonstrated pro-integration and competence-maximizing preferences and acted upon those preferences in various situations. Also, the Parliament's pro-environmental credentials have become well-known. Even though these preferences have shown some signs of fainting slightly from how strong they were – for instance the Parliament has started to promote slightly less pro-environmental proposals – there is still a clear rational for making these hypotheses. Expecting the leader-laggard dimension to explain the dynamics within the Environment Council has also become a pretty well-established assumption. The theoretical framework presented above is on what I base the following hypotheses:

"The Commission and the Parliament both have pro-integrationist and competence-maximizing preferences during the decision-making process of the GMO directive."

"The Parliament has pro-environmental preferences during the decision-making process of the GMO directive."

"The leader-laggard dimension explains the dynamics among member states within the Environment Council."

## **4. Method**

### **4.1 Case study research**

The case study has different meanings for different people and in different disciplines. However, there are some characteristics that all these approaches have in common. In broad terms, a case study can be defined as “a process of conducting systematic, critical inquiry into a phenomenon of choice and generating understanding to contribute to cumulative public knowledge of the topic” (Simons 2009). Robert E. Stake defines case study as “the study of particularity and complexity of a single case, coming to understand its activity within important circumstances” (Stake 1995), whereas Yin (2003, 13) defines it as “an empirical inquiry that investigates a contemporary phenomenon within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident”. The purpose of the case study, regardless of the field of study, is to catch the complexity of a single case and that the study should be done in a systematic manner.

The case study is not a research method. It is referred to as a method, a strategy, or an approach, and not always consistently (Simons 2011). Simons prefers a word “approach” to indicate that a case study has an overarching research intent and methodological (and political) purpose which affects what methods are chosen to gather data (Simons 2011). In this thesis, case study research is also referred to as an approach.

Case study research has a long history and started in disciplines such as sociology, anthropology, history and psychology and the professions of law and medicine. All these disciplines have developed their own procedures to ensure the validity of case studies for their respective purposes. However, the methods that are used in these disciplines differ. Open-ended interviews, participant observation and document analysis are some methods in use and the focus is on studying a single case in depth interpreted in a specific socio/cultural/political setting (Simons 2011).

As previously mentioned, all case studies are not the same. One distinction can be made between intrinsic case studies and instrumental case studies. When an intrinsic case is in question, we are interested in a case, not because by studying it we learn about other cases or about some general problem, but because we need to learn about that particular case. In other words, we have an intrinsic interest in the case. Whereas in an instrumental case study, we will have a research question, a

puzzlement or a need for general understanding and we feel that we may get insight into the question by studying a particular case (Stake 1995, 3).

While all case studies share some characteristics, differences exist between disciplines. George and Bennett (2005) have written the book, "Case studies and theory development in the social sciences," in which they provide a great outlook into how case studies are done in the field of political science. In political science, there are three phases in the design and implementation of theory-oriented case studies. In the first phase, design and structure of the research are set. In phase two, the case study is being carried out in accordance with the design; and finally in phase three, the researcher draws upon the findings of the case study and assesses their contribution in achieving the research objective of the study (George and Bennett 2005).

The problem of the study should be based on the research literature. As George and Bennett put it, the problem should "be embedded in a well-informed assessment that identifies gaps in the current state of knowledge, acknowledges contradictory theories, and notes inadequacies in the evidence for existing theories" (George and Bennett 2005, 74). The literature on case studies often emphasizes that the linkage between the empirical case and existing theories must be even stronger than in the context of comparative or quantitative research.

Phase one includes five tasks. These tasks are relevant not solely for case study methodology but instead for all types of systematic, theory-oriented research. These tasks must be adapted to different types of investigations but also to whether theory testing or theory development is the focus of the study. The design phase of theory-oriented case study research is of particular critical importance. If a research design proves inadequate, it will be difficult to achieve the research objectives of the study. Yet naturally, the quality of the study depends also on how well the other two phases are conducted (George & Bennett 2005, 73-74).

The research objective is the most important decision in designing the research. This is because it constrains and guides decisions that will be made regarding the other four tasks. A clear, well-reasoned statement of the research problem is helpful because it generates and focuses the investigation (George & Bennett 2005, 74). Studying environmental decision-making in the European Union is a large topic. Therefore, making choices early on concerning the research objective is crucial.

It is important to be explicit in what will not be studied and what phenomenon or behavior will be singled out for examination. In other words, what is the class or subclass of events of which the cases will be instances (George & Bennett 2005). In this study, the focus is on the EU institutions. In reality, there are a number of other actors contributing to the policy process such as companies and

environmental organizations. However, in this thesis, the decision is made that the impact of these other actors is not being assessed in detail.

There are important questions that need to be asked when creating the theoretical framework for the study. Bennett and George advise to ask - what theoretical framework will be employed, and if there are an existing theory or rival candidate theories that bear on those aspects of the phenomenon or behavior that are to be explained. Further, they advise asking which aspects of the existing theory or theories will be singled out for testing, refinement or elaboration (George and Bennett 2005).

The preferences of the actors are studied by analyzing the documents available in the Eurlex database, accompanied with journalistic material available online. The focus of this study is to gain an understanding of what the actors are suggesting in the course of the policy process and how the actors are reacting to others' suggestions. The latter is especially important in regards to the preferences of the Commission: the Parliament and the Council are the institutions that decide on the issue jointly, while the Commission's role is a more passive one.

On the side of the Commission, the preferences are analyzed posing the following questions: What is the Commission suggesting in its initial proposal for the Directive? Is the Commission making suggestions that are reflecting pro-integration and competence-maximizing preferences? Later, when the other institutions have set out their own proposals: how is the Commission reacting to those? Is the Commission ready to broaden the grounds on which the GMO ban can be based as suggested by the Parliament? How is the Commission reacting to the suggestions by the Council? Is the Commission trying to use possible windows of opportunities to promote its preferences?

## **4.2 Introduction to the material**

In this section, "a case" is referred to as the legislative process that led to the changes of the directive 2001/18/EC, allowing member states to ban the cultivation of GMOs in their territory. The primary material of the thesis consists of the official documents written during the process. The documents can be accessed either through the Eurlex database or the European Parliament's website.

These include documents such as the proposal for the Directive, discussions within the relevant institutions, an indicative list of grounds on which the ban can be justified, the Parliament's and Council's position at first and second readings, and the final version. Firstly, on the part of the Commission, a total of 5 documents are used, including the proposal for the directive, an indicative

list of grounds on which the ban can be justified, the Commission's position on EP amendments at first reading, the adoption by the Commission of its communication on the Council's position on first reading and adoption by the Commission of opinion on EP amendments on the second reading. Secondly, on the part of the Council, a total of 7 documents are used, including a discussion within the Council or its preparatory bodies in 2010, a discussion within the Council or its preparatory bodies in 2011, the Council's agreement in 2012, a discussion within the Council's preparatory bodies in 2014, the Council's agreement in 2014, the adoption of the Council's position at first reading in 2014, and the approval by the Council of the EP amendments at the second reading. Thirdly, on the part of the Parliament, a total of 3 documents are used, including the debate within the Parliament in 2011, the EP's opinion on first reading, and the EP's opinion on second reading.

These documents, or "hard primary sources" as Pollack (2003, 70) calls them, are supplemented with journalistic reports. Simons has argued that the greater number of different kinds of documents (the term used more widely in this context, including journalistic reports) the researcher can collect, the better the understanding of the overall picture. As she puts it, "one written statement might not mean anything, but many of them can add meaning to the context of the study" (Simons 2009, 64). In the context of the EU decision-making, the journalistic reports may "provide additional details regarding the preferences and interactions of key actors, particularly in the case of insider publications [...], which offer detailed, day to day analyses of EU negotiations with comparatively little attention to the public pronouncement of major politicians" (Pollack 2003, 71).

These journals that "provide additional details regarding the preferences and interactions of key actors" include magazines such as Euractiv, EuObserver, Europolitics, Financial Times, Reuters, The Guardian, The Parliament Magazine and The Telegraph. In addition to these, a statement by one stakeholder, Friends of the Earth Europe is included, as well as public statements of two parliamentary groups. In total, 19 articles are used to increase understanding of the political context and the actions of the institutions. The websites of these newspapers were searched using a key word "GMO", years 2010-2015, and relevant information concerning this legislative process was included.

Both official documents and journalistic materials were searched for clues of the actors' preferences and motivations behind certain actions. The questions asked here are as follows: "are the Commission and the Parliament acting in a pro-integration and competence-maximizing manner?", "is the Parliament seeking to 'green' the legislative proposal?". In practice, how this is done is by finding out *what both the Parliament and the Council are suggesting, and then analyzing these suggestions in light of the theoretical framework of the study*. From the political issues discussed during the policy process, there were four key points of discussion: the grounds on which the ban could be justified,



the change of the legislative base of the proposal, the two-step procedure, and a request for making GMO-producers liable for the damage they have caused. In addition to these suggestions by the Council and the Parliament and the discussion between them, the Commission's reactions and actions in general during the process are also analyzed.

Moreover, the analysis is not only interested in the suggestions of the institutions, but to some extent also in motivations and justifications of the institutions. Why are the Parliament and the Commission willing to give powers back to the member state level? What reasons are they giving? Answers to these questions were also searched for in the official documents and articles. To give an example, the discussion within the Parliament in 2011 revealed reasons behind why the "pro-integration" and "competence-maximizing" institution like the Parliament was supportive towards the piece. A matter that was brought up several times during the plenary by different political actors was the fact that the majority of the European citizens oppose the cultivation of GMOs, suggesting that this might be one possible reason for the Parliament's action. Intuitively, it is natural for a party-political institution like the Parliament to pay a close attention to the opinions of the voters. These kinds of motivations and explanations for actions were searched for in the official documents to find out why the institutions are not acting in congruence with their expected preferences. As the Commission and the Council are more closed institutions than the Parliament, there is a greater need to gather information using additional sources.

## **5. Analysis of the decision-making process of the GMO directive**

### **5.1 Background of the legislation**

The legislation process started officially on July 13th 2010, when the Commission published its proposal for a regulation of the European Parliament and the Council to amend a directive 2001/18/EC in relation to the possibility for the Member States to restrict or prohibit the cultivation of GMOs in their territory (European Commission 2010). This chapter provides information as to why the European Commission made the proposal and the political environment surrounding the legislation process. First, the chapter sheds light on the history of food safety regulation in the EU. Second, the chapter provides a brief overview of the US-EU relations as it relates to GMO policy. Third, the chapter touches upon the de facto moratorium of GMO approvals and safeguard clauses and the main reason as to why the EU set out the directive in the first place.

#### ***5.1.1. The US involvement***

The reaction of the US has worried the EU institutions from the beginning of the policy process studied in this thesis. These concerns are not without a foundation, as there is nothing novel about trade-related disputes between the EU and the US. In the past, there has been disputes over steel, tuna, wheat, canned fruit, oilseed, bananas, chicken among other issues. Not only the US, but also the EU has been an enthusiastic user of the reformed WTO disputes procedure. Most often, the actors have been using it against each other (Bretherton & Vogler 2006, 83).

One particular case is continuously referred to in regards to the legislative process in observation here. In the past, there was an instance in which the EU suspended the exports of GMO corn from the USA. First, the American administration at that time was hesitant to challenge the WTO on the issue of whether such public health concerns could legitimize protectionism. In May 2003, the Bush Administration decided to finally file suit against the EU at the WTO, risking a backlash from European consumers (Meunier & Nicolaïdis 2011). As there has already been disputes over GMO products with the US, it is possible that the EU will face problems with the US again in this policy area. Therefore, the concerns over the reaction of the US towards new legislation on GMO cultivation are not unjustified.

One of the major causes for the conflicts over the agricultural products has been the different approach these countries have taken to the food-related risk governance. While the EU is known as “the global precautionary superpower,” the approach taken by the US is fairly different. The stance of the US is that there is not enough scientific evidence that these unorthodox ways of producing food, such as treating beef with hormones or GMOs would be bad for human health. Therefore, the US perceives the actions of the EU as mainly motivated by protectionism. Since the EU has been unwilling to give up on its precautionary approach and the two stakeholders have been unable to settle the dispute themselves, the disagreements have led to the dispute settlement processes in the World Trade Organization between the EU and the US (along with other actors which have supported the US) (Devereaux et al. 2008).

Yves Tiberghien has characterized the EU concisely as “the global precautionary superpower” particularly in this policy field, and that the union has moved away from the initial consensus in the World Trade Organization (WTO) and Organization for Economic Cooperation and Development (OECD), and instead shifted towards mandatory labelling and strict safety assessments (Tiberghien 2009, 389). The precautionary principle is one of the guiding principles of environmental policy in the European Union and it has also guided the EU’s policy on GMOs. Critics have argued that the approach in the EU is too fearful and that the EU has not given enough attention to the scientific arguments which show that the GMOs are safe. To give an example, Claudio Mereu argues in his article that the EU institutions should do a detailed examination of both the benefits and risks that GMOs present when amending the Directive 2001/18/EC instead of focusing solely on the political concerns and risks of the GMOs (Mereu 2012).

The scholars have aimed at providing an answer as to why the EU has decided to take this stance on biotechnology. For instance, Charlotte Burns who has written many papers on the EU’s environmental policy has studied the EU’s biotechnology policy in general through the lens of historical institutionalism. She has tried to explain what has led to this situation, where biotechnology policy in the EU is “mired in controversy and characterized with legislative statis” (Burns 2012, 354). Burns argues that there hasn’t been any “subsequent exogenous shock” that has led to this state but instead, a relatively small decision early on in the policy’s development has been more important, such as the success of the Greens in Germany (Burns 2012).

The high number of disputes might seem to indicate that the nature of the EU-US relation is conflictual. However, this is not completely true. The EU and the US are both partners and rivals on the world stage which still share the same core values, many similar policy objectives and history. The relation “resists the simple characterization” (Peterson and Pollack 2003, 128). McGuire and

Smith have managed to capture quite well the nature of affairs, by characterizing the relations in words of “competitive convergence” (McGuire and Smith 2008). In other words, the EU and the US have noteworthy similarities, but also they tend to compete with one another. What is good to understand when speaking of the EU-US relation, is that the relations take place at various levels, in various issue areas and there is a myriad of different actors involved (McGuire and Smith 2008, 1-5). For instance, in the GMO case, the relevant official platforms are WTO and TTIP negotiations, all having to do with the US-EU relations in general.

It is worth pointing out that the disputes over agricultural products are not the only issues causing friction in the EU-US relations. Instead, the literature on transatlantic relations is filled with stories of policy failures, tensions in relations and disputes between the two. An example often brought up is the Iraq War in 2003, that not only caused tensions in transatlantic relations but also within the European Union (see for example Peterson & Pollack 2003, 1-12). However, as Delreux and Keukeleire have pointed out, regardless of these problems and even high-level clashes such as Iraq War in 2003, “the vast majority of this business continues without incident” (Delreux & Keukeleire 2014, 275). Therefore, the trade-related disputes over GMO and other agricultural products should not be taken as signs of some severe problems between the two actors. Tensions and sometimes even disputes are normal in the EU-US relations. However, even a short overview to the history of trade-related disputes makes the discussion over the GMO directive studied here more understandable: the US has already filed suit against the EU at the WTO over GMO issues before, therefore it is possible it will do it again. Next, it is time to take a look to the food-related risk regulation in the EU.

### ***5.1.2. Food-related risk regulation in the EU***

Food is a necessity for human survival and providing people with nutrients for energy and good health. Food is tied with cultural habits and traditions, and is considered an important economic good. Furthermore, the food and drink industry is considered one of the most significant industries in the EU. As a result, it is naturally important to consumers, producers and public authorities to have assurance of food safety and quality. The scholars widely agree that this assurance has suffered in the EU because of the BSE disease (often known as ‘Mad Cow Disease’) outbreak in 1996 that revealed serious shortcomings in the system for food safety (Vos 2009, 249). The BSE is a disease that spreads among cattle through their consumption of contaminated feed. In March 1996, a connection was revealed between a Creutzfeldt-Jakob disease that is fatal for humans and the BSE, and that it is

possible to get the disease by eating meat or drinking milk products from cows having this illness. This case highlighted shortcomings of the institutional structures of EU food and other policies on risk-related matters and decreased the public trust with the EU (Vos 2009).

The Commission was one of the main actors that was blamed. One of the accusations was that it had given too much consideration to the trade of beef over health and safety protection (Vos 2009). As a result, in the aftermath of the crisis, the Commission declared that food safety is its prime interest (European Commission 2000). The Commission's declared commitment to the food safety is interesting from the perspective of the long-term preferences of the EU institutions. Is this how a new, long-term preference of the Commission was formed? Is a crisis of this magnitude putting food safety higher on the priority list for the Commission for an extended period of time? As EU scholars have pointed out, the EU institutions are not simply having "competence-maximizing" or "pro-integration" preferences. For instance, Hix has noted that in reality, these institutions are having various other preferences, such as securing consumer rights and environmental protection to mention few (Hix 2011). Can it be accurate that the Commission has preferred food safety over its "competence-maximizing" or "pro-integration" preferences, which explains the result of the legislative process that led to the possibility of banning the cultivation of GM crops? We shall come back to these questions later in the paper.

In any case, the BSE scandal raised the question of risk regulation 'to the level of high politics, and indeed of constitutional significance' (Chalmers 2003, 234-8), and generated "extraordinary public awareness of food safety issues and widespread public distrust of regulators and scientific assessments" (Pollack and Shaffer 2009, 275). This was indicated in a study, which revealed that only 12 % of Europeans stated that they trusted the public national regulators, compared to 90 % of Americans who believed that the US Department of Agriculture's statements on biotechnology can be trusted (Enriquez & Goldberg 2000, 103). According to Paskalev, "it is widely accepted that the BSE (Mad Cow) disease and several other prominent food scares in Europe throughout the 90's lead to salience and polarized opinions on what elsewhere appears as a 'technical' issue, and to widespread aversion to GMOs in Europe" (Paskalev 2012, 190).

The European opinion polls have confirmed that there is general public unease about food safety regulatory institutions. For instance, a special Eurobarometer conducted in 2010 found that 59% of respondents disagreed with the statement that GM food is safe for their health and that of their family and 61% of them agreed that GMOs make them feel "uneasy" (Eurobarometer 2010). Furthermore, Vos argues that "not only citizens, but also Member States have voiced explicit distrust towards the European Union and appear increasingly willing to ignore or to disagree openly with EU legislation"

(Vos 2009, 251). Member states have more and more started to use either the opt-out provisions of the Community's harmonization measures or the safeguard clauses laid out in the particular directives in the field of health, safety and environmental protection, and put higher levels of protection for their own citizens (see for example De Sadeleer 2003, 889-915; Zander 2004, 65-79). Examples include Italy's refusal to allow GM maize into its market despite the authorization of the crop by the Commission; Austria's ban of GMO material in its province of Upper Austria which was at that time against the general authorization scheme on GMOs laid down in the GMO Directive 2001/18; and France's refusal to implement the Commission's demand in 1999 to lift the embargo on the export of British beef. (Vos 2009, 251.)

Against this background, the actions of the EU institutions become more comprehensible. It seems that within the first ten years while the new authorization system for GMOs has been up and running, the Commission has been unable to gain enough trust in the system, as a guarantee of the safety of GMO crops. In case the Commission would have pushed for a supranational solution and forced the member states to obey, both the majority of European public and a considerable number of member states would have likely protested. The positive stand of the European Parliament towards increasing the freedom of the member states also becomes more understandable. Using again the terminology of the principal-agent literature, acting upon "competence-maximizing" or "pro-integration" preferences in this case didn't make sense to neither of these two institutions. The history of countries using "safeguard clauses" also shows the countries that have acted as "environmental-leaders," in the case: France, Austria and Italy.

In general, within risk regulation literature, scholars have presented different views on what approach to take to risks on a societal level. Among these approaches, it is, broadly speaking, possible to identify two main opposing camps: rationalists and populists. Rationalists emphasize seemingly objective methods such as scientific risk assessment and cost-benefit analysis (see for example Sunstein 2002). On the contrary, there are populists who question the complete objectivity of these assessments and argue that public opinions, far from being irrational, are simply reflecting a different sort of rationality (see for example Winickoff et al. 2005). If simplified a little, the US along with other pro-GMO countries such as the UK, the EFSA and a group Nobel Laureates who signed the pro-GMO letter could be defined as "rationalists", whereas the EU, environmental organizations and the anti-GMO countries as "populists".

Before moving further, it is good to write few words about the EFSA, the European Food Safety Authority which has an important role in the GMO authorizations. The EFSA has been criticized for pro-industry bias. In December 2011, the EFSA reacted to these claims by adopting new

independence policy. This means opening its scientific meetings to public in a pilot project. According to Paskalev, this will scarcely change anything because the problem is not solely a matter of institutional design. When the EFSA takes into account “all the scientific information available”, as it is supposed to, EFSA cannot escape the fact that the information on new technologies comes largely from the industry. This is not a problem, which can be fixed under the prevailing regime. (Paskalev 2012, 200.) Knowing this reputation of the EFSA is important in understanding the political environment surrounding the policy process. In sum, the initiative to amend the directive 2001/18/EC as regards the possibility to restrict or prohibit cultivation did not come out of the blue. Instead, there has been long-lasting distrust towards the food safety authorities in the EU that has also affected the decision-making on GMOs. Next, a short overview is taken to member states opinions on GMOs.

### ***5.1.3 Member states opinions on GMOs***

Mühlböck and Tosun have recently studied the voting behavior in the Council in regards to the GMO crop authorizations. Importantly to this thesis, their paper also provided information on the member states’ current opinions towards GMOs. They found that there were two types of countries: one type voted either in favor of the authorization each time (either for or against) and the other type of countries demonstrated a more volatile voting behavior. The countries that voted against the authorization each time included countries such as Austria, Croatia, Cyprus, Greece, Luxembourg; and the country that voted for the authorization each time was Finland. The remaining member states did not follow a recurrent voting pattern, which Mühlböck and Tosun explained by national interests that vary over time, for instance because of the shifts in the government’s party composition. (Mühlböck & Tosun 2017, 9-10.) To illustrate the point, we can take an example of France. France was first approving of the new GMO crops (Tiberghien 2009, 397), however, this changed after the left-wing administration took office in 1997 and France became one of the strongest opponents of GMOs (McCauley 2011).

Whereas some countries have shown some volatility in their stance on GMOs, Austria has been relentless in its opposition. Because of the safeguard clauses invoked by Austria and several other member states, the United States with other actors have taken the issue of GMO crops to the WTO (WTO 2003) which made the Commission suggest that Austria “repeal the temporary precautionary measures” as the EFSA did not find any potentially harmful effects (The Council 2006, 20). However, the Council showed support to Austria and rejected the Commission’s proposal by qualified majority,

as it did already in 2005 in a similar situation, and Austria was able to carry on with its ban (The Council 2006, 20). Poland has also put in place bans on GMOs. In 2005-2007, the new-right-conservative government, and particularly the Ministry of Agriculture, has developed an ambition to make Poland and Polish farms stay GMO-free. As Austria, Poland has been ‘an opt-outer’ in GM cultivation (Dąbrowska 2009, 213-214). Other countries that have invoked safeguard clauses to ban the cultivation of certain GMO crops include Italy and Germany (Vos 2009), which indicates that these countries are not very supportive towards GMOs.

However, there are also countries that have hold a more positive view on the EU. In the UK, agricultural biotechnology was for a long time regarded as a solely scientific issue. Debate and concerns not resting on scientific proof was rejected as irrational or at most irrelevant (Black 1998), and according to Lee, “this narrow framework for decision-making went along with a resistance to public involvement” (Lee 2009, 165). This approach was in line with the UK’s approach to decision-making in technical or scientific policy areas more in general. However, this fairly narrow approach applied to GMOs faced difficulties in the changed political environment in the late 1990s. As elsewhere, development of agricultural biotechnology received an exceptional level of resistance by the public, influencing the major food retailers and processors to avoid carrying GM produce (Lee 2009, 165).

The Netherlands has also gained a reputation of being a pro-science country in regards to GMOs. As put by Somsen, “the Netherlands has a long-standing tradition as a liberal trading nation, where innovative technology and applied research are regarded as crucial for sustainable economic prosperity” (Somsen 2009, 187). Naturally following this, Dutch policy on GMOs from the 1980s onwards have been guided by the idea that the opportunities provided by modern biotechnology beat the possible risks that they may carry (ibid). Spain is cultivating a majority of GMOs in the EU and the country is widely regarded as a pro-GMO country. According to EuObserver, the country has collaborated closely with the United States to defend the production within the EU (EuObserver 20.12.2010). However, even though there are certain pro-GMO countries within the EU, the majority of the member states hold a pretty reluctant stance towards GMOs (Poli 2015). After this directive entered into force in 2015, more than half of the EU member states have opted out of GMO culture (Euractiv 2.10.2015).

As the rapporteur for the opinion of the Committee on Agriculture and Rural development put it during the plenary, “the Commission proposal, of course, is not about whether you are pro-GM or anti-GM” (European Parliament 2011, 31). Due to this, studying the member states’ preferences and identifying laggards proved to be difficult. For instance, simply the fact that the country is opposing



the proposal does not necessarily indicate the country's stance on the GMOs. To give an example, France can nowadays be identified as an anti-GMO country but it still opposes taking the decision-making process on the GMOs back to the member state level. As the French Farm Minister, Bruno Le Maire, told journalists in Brussels on May 2010 as regards the policy process I am studying here: "We hope that decisions will continue to be taken at community level. We don't support the re-nationalization of (GM) decisions" (Reuters 13.7.2010). As the sources available gave scarce information on the motivations of the countries, the focus is mostly put on the actions of one of the 'green' states, Austria. Next, after this short overview to the member states opinions on GMOs, it is time to analyze how the actual policy process went about.

## **5.2 Directive**

The policy process started officially 13.7.2010 when the Commission published its proposal for the Directive (European Commission 2010) and ended on 11.3.2015 when both the Presidents of the Parliament and the Council signed the final draft. As already discussed in part 2.2.4. of the co-decision procedure in this paper, the EU decision-making proceeds in stages. The analysis part follows the same order, as the actual policy process did: it proceeds chronologically and is distinguished to three main stages: initiation, first phase and second phase. In each stage, the three hypotheses set out in section 3.4 will guide the analysis. The stages of the policy process are the following:

### **Initiation**

- Proposal for a regulation adopted by the Commission on 13.7.2010.

### **First phase**

- Discussions within the Council or its preparatory bodies on 14.10.2010, 14.3.2011 and 21.6.2011
- EP opinion on first reading on 5.7.2011
- Council agreement on 9.3.2012
- Adoption of Council's position at first reading on 23.7.2014
- Adoption by Commission of its communication on Council's position at 1<sup>st</sup> reading on 10.9.2014

### **Second phase**

- EP opinion on second reading 13.01.2015
- Adoption by Commission of opinion on EP amendments on second reading 25.2.2015

### *5.3 Initiation*

In short, the policy process was about granting the member states the right to ban the cultivation of GMOs in their territory altogether. At first, the EU actors were considering other options than allowing a complete ban to solve the issue. It was considered that the EU could stick with the status quo and just better implement the existing policies. The Council Conclusions of December 2008 regarded the legislative framework of GMOs as comprehensive and underlined the need of better implementation of the existing provisions, notably concerning cultivation. In addition, the necessity of continuing processing applications without undue delays was noted (European Commission 2010, 2). As a result, the Commission made proposals requesting Austria and Hungary to withdraw their national safeguard measures since according to the EFSA, the countries did not have the required scientific evidence under the EU legislation. Even though the Council had asked for the stronger actions in terms of looking over implementation, in March 2009 the Council rejected the proposals by the Commission (European Commission 2010). These early steps appear confusing if one looks solely into official documents: first, the Council asks the Commission to implement existing provisions better, and after the Commission does so, the Council rejects the proposals of the Commission.

After the Council had rejected the proposals by the Commission, a group of member states made their proposal for giving the member states the right to ban the cultivation of GMOs in their territory. In practice, this would happen by adding one article to the directive 2001/18/EC. This idea for the directive change came from a group of thirteen member states which were Austria, Bulgaria, Ireland, Greece, Cyprus, Latvia, Lithuania, Hungary, Luxembourg, Malta, Netherlands, Poland and Slovenia (European Commission 2010, 2).

Austria was an important actor getting the issue on the EU's agenda. On 23 June 2009, Austria's delegation, along with the countries that supported the initiative, sent a document named a Way Forward – Information from the Austrian delegations to other member state delegations. The paper was supported by Bulgaria, Ireland, Greece, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland and Slovenia. This paper included many of the elements of the proposal given by the Commission in 2010. The paper suggested that the member states should be able to decide on the cultivation of

GMOs, for instance based on the socio-economic reasons and this could only be done by slightly changing the current legislation (The Council 2009).

At the request of the Council, the Commission drafted the Proposal for the Directive and sent it to the Parliament and the Council. This happened on 13 of July 2010 and it was the official beginning of the process. As explained earlier, the Commission is the exclusive agenda setter in legislative decision making. It can “decide whether to submit a proposal or not and choose the appropriate moment to do so, as the actual content and the wording of the proposal” (Bocquillon & Dobbels 2014, 22). However, as it seems to be here, this exclusionary right to act as the agenda-setter “has sometimes been more [of] a formal responsibility than a real source of power” (Edwards 2006, 9).

The policy process was about adding one article to the existing Directive 2001/18/EC on the environmental release of GMOs and regulations (European Commission 2010). The member states sought for the right to go further than the EU legislation allowed and to ban or restrict the cultivation of GMO crops in their territory if they wish, even though the scientific assessment done by the EFSA did not show any potential harmful effects. The amendment is not only applying to GMOs authorized for cultivation under Directive 2001/18/EC, but also under Regulation (EC) No 1829/2003 “which also covers applications for cultivation if they concern GMOs that are intended as source materials for furthering the production of food and feed” (European Commission 2010, 6-7). Even though the policy process was about changing something in a directive, the Commission decided to give it in a form of a regulation. This was later changed at the request of the Council.

Before the Commission sent the official proposal, a leaked impact assessment arose suspicion towards the aspirations of the Commission. For instance, Reuters headlined an article “Paper reveals EU plan to boost GM crop cultivation.” According to Reuters, the EU officials had assessed that proposals due to be submitted in June will probably bear a positive impact on biotechnology and seed companies, compared to the current situation. Details of the plan, including possibly more widespread cultivation of GMOs in Europe, received a “furious reaction from environmentalists,” already angry because of the EU’s executive decision to give their approval for commercial growing of a GM potato in March. The impact assessment also mentioned that the reaction of the WTO countries to the new proposals, especially the US, is one of the key issues for consideration. The assessment also notified the importance of biotechnology issues in transatlantic dialogue, and therefore to the US-EU relation (Reuters 3.5.2010).

In addition, the leaked impact assessment also showed that the EU executive was still considering other options than this legislative change. Reuter’s article pointed out that the EU executive wished

to put an end to the paralysis in GMO crop approvals, by giving the right to cultivate GM crops to those countries that wish to do so and sanctioning the “GM-free” stance that some of the member states are currently having. In addition, the article notes that the Commission was considering other options than revising the current legislation and tries to do the change within the current legislative framework, if possible. Trying to do the change within the existing legislative framework would mean that the Parliament would not be involved in the process. The Friends of the Earth Campaigner, Adrian Bebb, interpreted this as a way to avoid a democratic debate on the matter to please biotechnology industry and get the GMO crops into the EU (Reuters 3.5.2010).

The leaked impact assessment affected the political environment in which the piece of legislation was worked on. It arose suspicion towards the Commission’s aspirations. The things that the articles implied – that the Commission wanted to give a boost to biotechnology companies, considered going harder on the countries with the “GM-free” stance and considers the reactions of the WTO countries, maybe even worryingly too much – proved to be slightly unfair accusations. As was later seen, the Commission acted in a very moderate manner throughout the policy process, and there was no apparent pro-GMO bias. The reaction of the WTO countries was a shared concern for all the institutions, not only the Commission’s, since the beginning of the policy process.

In the Commission’s proposal, the new Article would enable the countries to “restrict or prohibit the cultivation of authorized GMOs in part or all of their territories on grounds other than those covered by the environmental risk assessment under the authorization system and those related to avoiding the unintended presence of GMOs in other products” (European Commission 2010, 6). The important part in this proposal and the matter of debate has been the grounds on which the member states can be restricting or prohibiting the cultivation of GMOs.

In its initial proposal, the Commission did not provide any clear grounds on which the ban could be justified. The proposal of the directive contained “two series of conditions,” in which the member states would be allowed to take measures. The first of them is that the member states can invoke the safeguard clause of Directive 2001/18/EC (Article 23) or the emergency measure of Regulation (EC) No 1829/2003 (Article 34) “in case they have serious grounds to consider that the authorized product is likely to constitute a serious risk to health and environment” (European Commission 2010, 7). The second of them is the grounds other than those covered by the environmental risk assessment under the EU authorization system. In addition, these grounds have to be consistent with the relevant EU treaties and legislation and the international obligations of the EU, especially with the ones established under the WTO (The Commission 2010, 7). Also in the preliminary discussions in the

Council, the compatibility with WTO rules was also mentioned both times (The Council 2010; The Council 2011).

The Commission's proposal for the directive, as it stood at this point, did not in fact provide that much new compared to the status quo. Already, prior to 2010, the member states were in practice allowed to ban the cultivation of GMOs by invoking safeguard clauses. Since the environmental risks assessment covered many of the key issues (such as the impacts of GMO crops to health and environment), there was not many grounds on which the ban could be justified, or at least, the possible acceptable grounds for the Commission were unclear.

The reaction of the Council and the Parliament to the proposal will be discussed later in the paper. I agree with Sara Poli, who argues that the Commission's reaction to "the intergovernmental call for action" can be regarded as positive (Poli 2013, 144). One thing indicating this is the reaction of the President of the Commission. Both Barroso and Juncker have been supportive towards the legislative change straight from the beginning. In fact, political guidelines for the New Commission in September 2009 set out by President Barroso made reference to the principle of subsidiarity in the GMO area as an example where the balance may not always be right between an EU framework and the need to take account of diversity in an EU of 27 Member States (European Commission 2010).

### *Analysis*

The proposal was not in line with the expected pro-integration and competence-maximizing preferences of the supranational institutions since instead of increasing the EU's competencies, the act seek to decrease them. In this sense, the nature of the act was easy to define. However, defining the proposal either as a "pro-environmental" or "anti-environmental" act proved to be a more difficult task. First, this task needs to start with the question: is the pro-GMO stance either pro-environmental or anti-environmental?

Mounding consensus in the science community today has increasingly held that the GMOs are not more harmful for consumers or the environment than the crops of natural origins; and that opposing the use of the GMOs is harmful to the global poor. Probably the most far-reaching study up-to-date, the report by the National Academies of Sciences, Engineering and Medicine, came to this conclusion: GMO crops are not any more dangerous than the crops of natural origin. This conclusion was reached after the committee had gone through hundreds of scientific studies about the topic, held

a number of public meetings on the topic, read the submissions of information coming from outside parties, and lastly, after the investigations of the Committee members and staff (National Academies of Sciences, Engineering and Medicine 2016).

In addition, a quite notable number of Nobel Laureates have joined the pro-GMO choir: in total 100 Nobel Laureates, most of which who have earned their Nobel in related fields such as chemistry, medicine and physics, have urged Greenpeace, the UN and Governments to reconsider their stance on GMOs. In the letter, the Nobel Laureates argue the same as the study referred to earlier: GMOs are as safe, if not safer than the crops of traditional origins (Support Precision Agriculture 2016). One of the signatories, a biochemist and molecular biologist Richard Roberts has criticized the EU's stance in particular. In his words, "European politicians support a great deal of scientific research but they often do not pay attention to the results if they are 'politically unwelcome'" (Euractive 9.8.2016).

Following this, one could argue that the pro-GMO stance is also a pro-environmental stance: GMOs often need less pesticides (WHO 2014) and because of that, they are better for the environment since no unwanted side effects, such as harm to ecosystems due to the GMO cultivation are not observed. Moreover, since the GMO crops would yield better crops, less land would be needed for the farming. However, the problem that is often pointed out is that this view in the scientific community is based on scientific research mostly funded by the biotechnology companies. Then again, the opposition towards the GMOs of the actors usually seen as defenders of environmental interests, such as environmental organizations and the Green parties, indicates that the pro-GMO stance could be regarded as anti-environmental.

The anti-GMO line of argumentation tends to claim that it is better to be safe than sorry and that GMOs are not necessarily needed to feed the population so why take the risk to use them. This line of argumentation connotes with the precautionary principle, which is one of the key principles of the EU's environmental policy. As it is detailed in Article 191 TFEU, the precautionary principle means that if an action or policy has a suspected risk of causing harm to the public or to the environment in the absence of scientific consensus, the policy or action in question should not be pursued. Even though the scientific consensus has increasingly become that the GMOs are not harmful, there is still a need for impartial scientific studies funded by non-industrial actors. In addition, the studies have not been able to yet to show the long-term effects of GMOs on humans. This would make it difficult to reverse the situation once GMOs have started to be cultivated. Notwithstanding, I would argue that even though there are increasing opposing view in the scientific community, GMOs are still generally regarded as something anti-environmental.

The second question is, whether *the proposed act* is pro- or anti-environmental. The intuitive idea is that the proposed act is pro-environmental since it gives the member states a right to go further than allowed in the EU legislation and ban GMOs altogether in their territory. However, in practice, the outcome of the new legislation might be that more GMO crops are allowed to be cultivated in the EU territory since the member states that oppose GMOs would be less eager to hinder the process of new GMO crop approvals. This would lead to a situation in which more GMOs would be cultivated in the EU area than before the act. Therefore, defining the act itself as pro- or anti-environmental clearly is problematic. Should it be defined based on the form in which it currently stands or on the expected outcomes?

In fact, defining the act as either pro- or anti-environmental is not necessary. In this study, the question I am interested in is the action of the EU institutions, namely whether the Parliament is pro-environmental and whether the leader-laggard-dimension explains the dynamics within the Council. What is more important than defining the act itself is to analyze how the actors behaved. Did the Parliament seek to ‘green’ the Proposal? How did the environmental leaders act? In addition, it is worth mentioning that the act was not mainly motivated by environmental concerns. The act seemed to be inspired by the principle of subsidiarity. Now, as we have defined the nature of the proposal, the next section will focus on the analysis of how this initiation phase appears in light of the study questions and the hypotheses set out earlier.

The first hypotheses focus on the role of the Commission and the Parliament in the process and expects them to have pro-integration and competence-maximizing preferences. The initiation stage is where the Commission’s role is the most apparent, so this part of the analysis focuses on the role of the Commission. The counterintuitive observation has been that the Commission is neither acting as a “competence-maximizer” nor “a pro-integration” actor in the policy process. Did the Commission, nevertheless, have such aspirations behind the scenes? Can the considerations of other options than a legislative change be taken as a sign of that? Nevertheless, the Commission ended up giving the proposal that follows the ordinary legislative procedure and suggested more flexibility to member states in their choice over GMO cultivation rather than sanctioning countries seeking to be GM-free and adhering with the status quo. Therefore, far-reaching suggestions of the Commission’s true aspirations should be avoided, however, the leaked impact assessment is suggesting that the Commission might have been slightly less willing to erode the supranational solution than it first appeared.

However, as pointed out earlier, the Commission’s proposal for the Directive did not differ that much from the status quo. The two grounds on which the ban of the GMOs could be justified were similar

to the situation as it stood at that point: member states could ban the cultivation of GMOs if GMOs were posing a considerable risk, which was already possible by invoking safeguard clauses. The second ground suggested by the Commission did say that the member states can ban the cultivation of GMOs on grounds other than those covered in the environmental risk assessment but did not clarify what those grounds would entail in practice. The wording of this part of the Commission's proposal suggested that these grounds had to be well-established: banning the cultivation of the GMOs simply because the countries felt uneasy about them did not seem to be a good reason enough – or at least, the proposal left open what those acceptable grounds were. If interpreted this way, the Commission's proposal did not seem to be that far-reaching or differ that much from the status quo. It would simply allow member states to legitimately continue what they were already doing.

However as it turned out later, the Commission did not try to stick with a solution close to the status quo, but instead, was open to broadening the grounds on which the ban could be justified considerably. Therefore, the Commission's behavior can in fact be regarded as counterintuitive even though the initial proposal for the directive did not differ that much from the status quo. The question that follows is: how can this counterintuitive behavior of the Commission witnessed here be explained?

The literature on the principal-agent model suggests that the agents might not be acting upon their true preferences if they are afraid of punishment on the behalf of the principals. The behavior that does not seem to be affected by the principals' requests, might actually be a result of the agent's will to avoid sanctions. However, in this case, there is a reason to believe there is more to it than the Commission's fear of being punished on the behalf of the member states. Since the beginning, the Presidents of the Commission has been supportive towards the initiative and throughout the policy process, the Commission has acted more or less like "an obedient servant".

As already touched upon earlier, one plausible explanation is that the Commission's action is part of a larger behavioral shift within the Commission in the face of rising Euroscepticism. Instead of fearing punishment on the behalf of the principal, the agent here might be afraid of punishment on the behalf of the European public. Pro-integration and competence-maximizing action in the current atmosphere might lead into unwanted consequences to the process of integration in the long term. The basic assumption here is the actor's rationality: a rational actor would not seek to promote integration and increase its competencies in a situation like this.

Namely, there seems to have been a considerable shift in the behavior of the Commission. The Commission has demonstrated "pro-integration" and "competence-maximizing" preferences in this



policy sector. In general, the policy on GMOs that the Commission has been pursuing since the early 1990s is “the establishment of reliable rules for approval that can enable both public support and the promotion of biotechnology in the EU (as a research area and as a competitive industry)” (Tiberghien 2009, 295). The Commission has demonstrated a will to sustain its agenda-setting power relative to member states and to broaden EU’s competences over new “novel frontier issues, such as the environment and food safety” (ibid). In the past, the Commission determinedly sought to gain trust to the authorization system of GMOs.

The literature on the principal-agent model discusses the potential internal struggles within the institutions. It is difficult to tell whether there have been internal struggles on the case within the Commission by simply analyzing official documents available in the Eurlex-database; but on the outside, the Commission seems to be united on the issue. However, even though internal struggles within the institutions would exist, what matters the most is how the institutions are behaving vis-à-vis each other.

The second hypothesis handles the pro-environmental preferences of the Parliament. Since the reaction of the Parliament is analyzed in the next part as the Parliament gives its position at first reading, we can move on to the last hypothesis which is that the leader-laggard dimension among member states explains the dynamics within the Environmental Council. In the early steps of the policy process, the role of one of the leader states, namely Austria’s, was significant.

The third hypothesis assumes that the leader-laggard dimension among different member states explains the dynamics within the Environment Council. First off, it is good to start with defining the member states playing an active role in these early steps. A coalition led by Austria signed the initial suggestion for the directive. These countries included BG, IE, EL, CY, LV, LT, HU, MT, PL and SI. From these countries, Austria, Cyprus and Greece have regularly voted in the past against the authorization of new GMO crops.

Before 2009, Austria’s strategy was closest to “opt-outer.” This strategy is characterized by an indirect pushing, at least from the point of view of the member state. In this scenario, the country is not seeking to present its strategy as something that other countries should adopt. The difference between this strategy and strategy c is that “national measures in these cases somewhat unexpectedly turn out to be out of line with EU measures, something which may lead the member state to opt out.” Austria has been motivated to secure a high level of protection in the country against GMOs. Over the years it proved to be that the authorization system for GMOs was not reliable enough to Austria, which caused it to “opt-out.” The EU legislation was not sufficient enough to gain Austria’s support

as it did not guarantee a high level of protection to Austria against the possibly unsafe GMOs. Other countries that invoked safeguard clauses may be defined also as “opt-outers.”

In 2009, Austria’s strategy developed from an opt-outer closer to a strategy called “constructive pusher.” It sought to influence the EU environmental policy-making directly by building alliances with the Commission’s experts or with other member states. This type of strategy is often referred to as the constructive pusher strategy, because it is basically oriented towards finding a compromise, possibly at the expense of slightly lower EU standards than domestic ones.

The laggards in the Council proved to be more difficult to spot in a reliable manner. The documents available in the Eurlex-database and the journalist reports available online did give scarce information on the member states action within the Council. For instance, it is not enough saying that a country has voted either against or for the proposal. Sometimes a country may vote against a pro-environmental proposal, because it thinks that it is not ambitious enough (Lieberink and Andersen 1998). Relating to this policy process, both Austria and the Netherlands advocated taking back competences to the national level but for completely different reasons: the Netherlands so that it could have more of them, whereas Austria to block them altogether (Hristova 2013, 121). Because of the resource constraints, I decided to focus mostly on the actions of the ‘green’ member states, and especially on the behavior of Austria.

In sum, the idea for introducing a possibility to ban the GMO cultivation initially came from a group of member states. From the start, the Commission’s reaction to this intergovernmental call for action has been positive. The next section is comprised of the first phase of the policy process, namely the reaction that this piece of legislation evoked within the institutions.

### 5.3 First phase

The key points of discussion
1. The grounds on which the ban could be justified
2. The legislative base
3. The two-step procedure
4. The liability requirement for GMO-producers

During the legislative process, the EU institutions discussed both technical and political issues. From these political issues, it is possible to identify four key points of discussion. First, the grounds on

which the ban could be justified was one of them. Second, the suggestion of the Parliament that the legislative base of the proposal should be changed from the internal market to the environment. Third,

the two-step procedure suggestion from the behalf of the Council. Fourthly, a request for making GMO-producers liable for the damage that they have caused. In addition, throughout the process, two concerns were expressed on the behalf of all EU institutions: the impacts of the proposal on a single market and compatibility with the WTO rules. At first, the proposal was under the form of the regulation (European Commission 2010, 8), but from the request of the Council, it was changed to the form of a Directive.

Even though both the Parliament and the Council start discussing the proposal after the Commission's submission, the second step in the co-decision procedure is that the Parliament "adopts its position at first reading and communicates it to the Council" (TFEU Article 294). This part of the thesis covers "the first phase" of the process, meaning the time span of 2010-2012. During this time, both institutions discussed the proposal and the Parliament succeeded to adopt a position at first reading, whereas the Council failed to do so.

### *Discussions in the Council*

The Council started officially discussing the proposal on 14.10.2010. The proposal received mixed reactions. Some delegations voiced concerns about the possible fragmentation of the Common Agricultural Policy and doubts over proposal's impact on the single market. Others welcomed the proposal as a way to respond to public concern over GMO cultivation. In general, many delegations had questions regarding the workability of the proposal in practice. Some delegations wanted a clarification from the Commission on how "the restrictive measures" would need to be justified in order to be compatible with WTO and internal market rules. The paper mentions that as effects on human health and the environment are already taken account during the authorization process, and therefore, "they must not be invoked by member states" when banning the cultivation of already authorized GMOs. The conclusion of the meeting was that the debate and legal analysis of the proposal shall continue within the Council (The Council 2010, 7.)

After the discussion, the Council asked the Commission to provide a list of grounds on which the ban could be justified. The Council continued discussions on 14.3.2011 and a number of delegations "felt that this list was a good basis for further work on the proposed act", but on another hand some member states requested adding such grounds as "protection of biodiversity", "socioeconomic factors" and "agricultural structures". In addition, some member states signaled of being unsupportive towards

adding “general environmental policy objectives” on the list. Already in the discussion on 14.10.2010, the idea was brought up that “As effects on human health and the environment are already considered during the EU authorization process for GMOs, they must not be invoked by member states when banning the cultivation of GMOs that are authorized for placing on the market” (The Council 2010, 7).

This starting point differs from the one that was later taken by the Parliament, since it suggested that member states could ban the cultivation of GMOs on other environmental grounds than those considered in the authorization process. Put simply, in this preliminary discussion it seemed that some delegations in the Council were unsupportive towards the idea of having “environmental grounds”, as one ground on which the cultivation ban could be justified, whereas the Parliament was pushing for it. However, this idea was only brought up in the preliminary discussions in the Council and it was unclear to what extent the whole Council agreed with this part of the document.

In this initial Proposal for the Directive, the Commission did not give concrete grounds on which the member states could ban or restrict the cultivation of GMOs. Instead, it only delimited that the grounds should be other than those already covered by the environmental risks assessment under the authorization system. The Council requested the Commission to create a list for possible grounds for the ban. By the meeting on 14.3.2011 in the Council, the Commission had provided the Council an indicative list of reasons that the member states could use to ban the cultivation of GMO in their territory. In the meeting, the countries exchanged views on these possible justifications. Also in this meeting, some delegations were concerned about the legal compatibility of some grounds in the suggested list with WTO and internal market rules. A couple of delegations reiterated their concern about the overall workability of the proposal. “Doubts were voiced as to whether a ban could be justified on the grounds of general environmental risk assessment. Some said that an overlap between the two must be avoided.” (The Council 2011.)

From the start, the internal divisions within the Council were a prominent feature in this policy process. As already mentioned in the co-decision part, the internal divisions within the Council are not often known by other actors which gives the Council a leverage over the Parliament. (Costello and Thomson 2013, 1037.) In this case, the internal divisions were well-known by other actors. The cleavage did not simply follow the lines of pro or anti-GMO, due to the complexity of the situation.

### *The Parliament's opinion on first reading*

The European Parliament published its opinion on first reading on 5.7.2011. The Parliament supported the proposal but introduced a number of changes on the proposal designed to detail the grounds that could justify restrictions on the cultivation of GMOs and to better reflect the member states' concerns vis-à-vis transgenic crops. The European Parliament made 28 proposals from which the Commission accepted 21. Probably most importantly, the Parliament introduced three grounds on which the ban could be justified: environmental impacts, socio-economic impacts and impacts on land use, town and country planning. In addition, the Parliament suggested a change of legal basis, namely replacing Article 114 with Article 192, to secure the position of the member states.

In the plenary, the representative of the Commission mentioned that the formulation of environmental grounds for the ban was a central point for discussion between the two co-legislators. The important issue for the Commission was that these grounds were clearly distinct from those already considered in the EU's authorization system (The European Parliament 2011, 30).

The legal basis was one of the key points of discussion. The other two institutions rejected the Parliament's idea to change the legal basis. The Commission argued, that "the center gravity of the proposal and of the Directive as amended would still remain the smooth functioning of the internal market" (European Commission 2014a, 7). Even though the environmental grounds suggested by the Parliament would be incorporated to the text, the proposal would still be mainly about improving and smoothing the functioning of the internal market, while ensuring protection of the environment. In addition, the Directive 2001/18/EC, that was supposed to be changed as a result of this policy process was also based on Article 114 TFEU (ibid). As touched upon earlier in the thesis, since the beginning of the environmental policy in the EU, the internal market and environmental issues have been closely intertwined (Peterson and Bomberg 1999).

Sometimes it is slightly difficult to define, and a matter of debate, whether the internal market or environmental aspect is more predominant. The legal basis remained in the Article 114 TFEU (internal market), however, the actors that handled the case were the Environment Committee in the Parliament and the Environment Council within the Council. However, since the beginning of the policy process, the issue seems to be framed in other means than environmental. As Poli argues, "national concerns over the cultivation of GMOs cannot be reduced to the environmental impacts of GMOs but to a broader range of concerns that the Directive stresses" (Poli 2015, 563).

The Parliament voted in favor of the dossier at the first reading. However, as always, not all political groups were satisfied with the piece. Miroslav Ouzký on behalf of the ECR Group criticized Lepage's report on many grounds. For him, it went "far beyond the framework of the Commission proposal, as the Commissioner has also emphasized here" and "is clearly motivated by opposition to genetically-modified organisms (GMOs)" (European Parliament 2011, 34). He also reminded how common GMOs nowadays are elsewhere and how "our initial caution may worsen and is worsening the position of our farmers on the global market" (ibid). He also requested that as the suggestion gives the member states the right to ban the cultivation altogether, it should also grant them right to cultivate GMO crops which are unauthorized in the EU. All in all, Ouzký concluded that "I cannot vote for the report unless the proposed amendments which slightly liberalize it are adopted" (European Parliament 2011, 34).

Ouzký's request to grant member states the right to cultivate even unauthorized GMO crops and nationalize GMO cultivation altogether is fairly interesting. Even though in this policy process, the Parliament and the Commission are not acting as "competence-maximizers" and "pro-integration" actors as it is expected from them, they are not going so far that they would erode the entire authorization system for GMOs and nationalize the decision-making over GMO cultivation. The Council hasn't either pursued eroding the authorization system. Instead, keeping the centralized system for authorization has been an interest for all three EU institutions since the beginning of the policy process (The Commission 2010; the European Parliament 2011; The Council 2010). Still, after this directive change, the authorization of new GMOs for cultivation is done on the EU level even though this would not necessarily need to be the case. Even though the Parliament and the Commission are not acting in that "pro-integration" and "competence-maximizing" manner as expected from them, they could have gone further in their suggestions and suggested the complete re-nationalization of the policy regarding GMO cultivation.

Justas Vincas Paleckis spoke on the behalf of the group. As a group, S&D was supportive towards the proposal. Based on Paleckis' speech, this was due to the following pragmatic reasons: the current legislative framework did not fit the needs of the different member states. He referred to the basic problems of the status quo: some member states want to give "a green light" to GMOs while some would like to give "a red light," and are currently invoking safeguard clauses to ban the cultivation. Paleckis said that "usually our group is a proponent of a Community approach, but in this particular case we should not have a one size-fits-all policy" (European Parliament 2011b, 33).

Kartika Tamara Liotard spoke on the behalf of the GUE/NGL Group. Her speech reflected negative stance on GMOs. She argued that "when the member states finally obtain the authority to keep outside

their borders this junk – namely genetically modified organisms (GMOs) – that the European Union wishes to authorize, it must not be a mere pretense of authority, as it was in the original Commission proposal” (European Parliament 2011b, 34).

Antonyia Parvanova, on the behalf of the ALDE group, supported the piece. She argued that “those saying that such an approach would create an obstacle to the European internal market are wrong, and they tend to forget that when it comes to such a controversial and still debated technology affecting European territories, the landscape, biodiversity and regional specificity, the level of discussion should be left as close as possible to European citizens”(European Parliament 2011b, 33).

It seems that Parliament’s position also pleased environmental organizations, suggesting that it may be regarded as pro-environmental. Mute Schimpf, food campaigner for Friends of the Earth Europe stated after the vote that “MEPs have today defended the right of European governments to ban genetically modified crops” ... “This is a clear signal from MEPs that they are on the side of the majority of European citizens who oppose GM crops – it is now up to the European Commission and governments to make sure safeguards against GM crops are upheld” (Friends of the Earth Europe 5.7.2011).

### ***The Council fails to reach an agreement***

The Council discussed the proposal on 9 of March 2012. The Council discussed on the basis of a compromise text from the Presidency. Although a large number of member states could accept the Presidency proposal, it was not yet possible to reach an agreement in the Council. The issues that were problematic for the countries were the following: 1. The legal compatibility of some provisions in the proposal with WTO and EU internal market rules. 2. How to avoid possible overlaps and/or inconsistencies between the mandatory risks assessment at EU level and national environmental measures; 3. The implementation of the Environment Council Conclusions adopted on 4 December 2008 (The Council of the European Union 2012, 11).

The official EU documents do not reveal which countries were against the proposal. According to Europolitics, the “blocking minority of France, Germany and Belgium were unrelenting in their resistance to compromise proposals drawn by the Danish Presidency” (Europolitics Monthly 3/2012). Even though Britain and Spain opposed the paper at first, they later decided to support the Danish compromise, EU sources involved in the talks told prior to the meeting (Euractive 9.3.2012).

Out of the four key points of discussion, the grounds on which the ban could be justified was probably the most important one. Taken the history of the EU in the WTO trade disputes over agricultural products, this is nothing but wise. The WTO rules set out a basis of rules on which these kind of rules causing “trade distortions” can be based on. In short, the WTO rules allow import bans for agricultural products on certain grounds. Even in pretty similar cases, the reason why one ban has caused problems whereas another ban hasn’t, has been on the grounds of which the ban is put in place. For instance, in the hormone beef case, the EU invoked to health reasons which were, however, not scientifically proven; whereas in the GMO case, the EU invoked to public morals that it was an acceptable reason for the ban according to WTO rules.

### *Analysis*

The first hypotheses focus on the role of the Commission and the Parliament in the process and expects them to have pro-integration and competence-maximizing preferences. Even though the Parliament did not seem to be a pro-integration and competence-maximizing actor, the Parliament was not willing to erode the centralized system altogether. As Ouzký pointed out, the EU could have gone further and decide to erode the whole centralized system and leave both the decision to cultivate or not to cultivate altogether to the member states. As pointed out earlier, keeping the centralized system has been an interest for all three EU institutions since the beginning of the policy process.

As previously mentioned, the Commission did act in a counterintuitive manner in this policy process, and so did the Parliament and the question is: why is that? One plausible explanation is simply the Parliament’s will to please the voters. The Parliament consists of party political groups. These political parties consist of politicians who wish to be re-elected. Therefore, for them, also their natural interest is the view of the majority of the European public. The majority of the Europeans are opposing the GMOs, so it is therefore natural for the Parliament to be willing to grant the member states the right to ban the cultivation of GMOs. However, in general, promoting pro-integration and competence-maximizing preferences are against the will of the European public. As known, Europarties and the MEPs are in general more enthusiastic towards the European integration than an average voter. Therefore, explaining the Parliament’s action by its will to please the citizens is not that great of an explanation for its action. Why, in this case, the Parliament would be considering the view of the general public when in other issues it has been willing to promote the integration even though it knows that the general public holds a more moderate view on the integration?



What is also problematic in this explanation is that it is questionable to what extent the MEPs are driven by the will to be re-elected. As often mentioned, the EP elections are second order elections which are fought on the national rather than European issues (Reif & Schmitt 1980). According to Hix (2011, 54-55), due to this and poor knowledge of the voters on what the MEPs are doing in the Parliament, there is not much that an MEP can do to increase her chances of re-election. Therefore, the actions of the MEPs are less driven by the will to be re-elected than career goals and policy targets that can be reached in the Parliament.

Another possible explanation is a more pragmatic one. All the institutions have simply realized that there are policy issues that simply cannot be efficiently handled on the EU level. The member states have not, after all, been ready for the initiative laid out in the directive in 2001: the member states stances on the GMOs are too diverse. The EU needed to take action, because in case the de facto moratorium of the new GMO approvals would have lasted longer, the EU would have faced problems with the countries through the WTO.

When it comes to the second hypothesis concerning pro-environmental preferences, the Parliament proved to still be an “environmental champion” as expected. The three main pro-environmental suggestions it made were the following: liability requirement for the GMO-producers, changing the treaty base and that the ban could be justified on environmental grounds. In the tables below, I have classified the ambition level of each suggestion.

The proposal	The ambition level of the suggestion
Liability requirement for the GMO producers	A strong ecological modernization
Changing the treaty base	A weak ecological modernization
The ban could be justified on environmental grounds	A weak ecological modernization

Based on the classification developed by Burns and Carter (2010).

Using the classification by Burns and Carter (2010) the ambition level of this amendment is “a strong ecological modernization” since the Parliament suggested applying the polluter pays principle.

As put in the Article 26c:

*Liability requirements*

*Member states shall establish a general mandatory system of financial liability and financial guarantees, for example through insurance, which applies to all operators and which ensures that the polluter pays for unintended effects or damage that might occur due to the deliberate release or the placing on the market of GMOs.” (European Parliament 2011, C33 E/357.)*

In addition, the request to make the GMO producers liable can be regarded as something that would have given new competences to the EU because the EU actors would be needed to oversee the implementation. In this respect, the Parliament has also acted as “competence-maximizer”. The Parliament also suggested changing the legislative base, by replacing Article 114 with Article 192. Corine Lepage defended the idea in the following way:

*“Secondly, we are proposing a change of the legal basis, namely replacing Article 114 with Article 192, which is designed to secure the measures taken by the various Member States. The objective here is to avoid leading the Member States into decisions that they could not defend in good conditions before the courts, should they be taken there by producers of GMOs” (European Parliament 2011, 29).”*

Categorizing this suggestion according to the classification provided by Burns and Carter was more challenging. Was the impact either neutral, marginal or weak? I ended up defining it as “a weak ecological modernization.” If it really gave the member states more security when it came to the banning of the cultivation of GMOs, that would be beneficial also for the environment, as I have defined the GMOs as anti-environmental. The European Parliament also provided a detailed list of environmental grounds on which the ban could be justified. The Parliament stated that the grounds should be complementary to those examined during the authorization process and grounds relating to risk management. The Parliament provided a list of environment-related grounds that consisted of six points. This can also be regarded as an amendment that showed pro-environmental preferences.

Did the laggards try to hinder the adoption of the piece of legislation? As the pro-GMO stance has been defined as “anti-environmental” in this thesis, Spain and the UK can be defined as “laggards” as they are pro-GMO. Even though slightly reluctant at first, at the end they supported the compromise proposals drawn by the Danish Presidency. The countries that opposed the proposal, France, Germany and Belgium, have demonstrated somewhat a reluctant stance on GMOs. Therefore, one cannot make the claim that the proposal was turned down by laggards.

## 5.4 Second phase

It took two years before the proposal returned to the negotiation tables. The Council relaunched the discussion over the proposal on 3.3.2014 (The Council 2014). Under the co-decision procedure, after the Parliament has adopted its position at first reading, the Council needs to decide whether it approves the position. If the Council approves the Parliament's position, the act is simply adopted "in the wording which corresponds to the position of the European Parliament". In case the Council rejects, "it shall adopt its position at first reading and communicate it to the Parliament" (TFEU, article 294). The latter was the case this time: The Council did not approve the Parliament's position but instead, adopted an own position on 23.7.2014 (The Council 2014).

### *The new president for the Commission*

In 2014, some noteworthy issues occurred in the political environment. The President of the Commission changed from Barroso to Juncker and the new European Parliament was elected. Juncker was no less supportive towards the initiative than Barroso. According to Euractive, the selection of the Juncker received a negative reaction from the GMO lobby. The chairman of EuropeBio, André Goig commented "we believe this will not be positive", as regards to the announcement of the new Commission. One of the reasons that is given to this negative reaction is the fact that the Juncker's Commission proclaimed to be "more political" than its predecessor (EurActiv 11.9.2014).

Shortly after Juncker took office, The Telegraph wrote an article disclosing that Juncker sacked one of the EU's scientific advisers over her "pro-GMO views" and how this act received a negative reaction in the scientific community. For instance, Chief Scientist and WHO representative to the EU, DR. Roberto Bertollini, saw this as an action that shows Juncker's "unwillingness to accept independent scientific opinion". Professor Colin Blakemore and the university of London commented that "it's a sad day for science, policy, politics and the public in Europe" after the incident. According to the paper, the final decision to sack the professor, Anne Glover, came after France made clear that her pro-GMO opinions were "unacceptable". In addition, the paper implied that Juncker's home country, Luxembourg, has something to do with Juncker's reluctant stance towards GMOs. However, the spokesman for Juncker denied that Glover was sacked due to political reasons. Instead, she told

the Telegraph that “the post automatically ended with the old Commission” (The Telegraph 13.11.2014).

In this thesis, the focus is mainly on the collective interests and actions of the supranational EU institutions. Therefore, the Juncker’s role and causal effects in this case are not being analyzed further. In order to know which actors within institutions have influenced the process and how much, the analysis of different EU documents would most probably need to be accompanied with interviews with EU insiders. All in all, Juncker’s approach to the GMO policy does not seem to deviate much from that of his predecessor. In the political guidelines for the new Commission, Juncker stated that “I will make sure that the procedural rules governing the various authorizations for GMOs are reviewed. I would not want the Commission to be able to take a decision when a majority of Member States has not encouraged it to do so” (European Commission 2014b, 16.) Sara Poli believes that his appointments have “greatly favored the approval of the new act” (Poli 2015, 562).

### ***The Council’s position at first reading***

The Council’s position differed fairly much from that of the Parliament. Probably the most striking difference was introducing the “the two-step procedure”, which meant that a member state wishing to ban *a certain GMO crop* from cultivation has to communicate first with the notifier/applicant via the Commission. This new procedure resulted in heated conversation in the Parliament (Euractive 20.4.2015) and received criticism on the behalf of environmental groups which argued that it would place too much power in the hands of biotech companies (The Parliament Magazine 23.6.2014). Before moving on to the discussion over this new initiative, a closer look to this procedure is worth taking. In more detail, the proposed procedure would go as follows:

1. ‘Opting out’ may happen already during the authorization procedure of a new GMO crop or renewal of consent/authorization. A Member State wishing to ‘opt out’ sends a request to the notifier/applicant, via the Commission, and communicates its request to be excluded from the geographical scope in which the cultivation of the GMO crop shall be allowed.
2. The notifier/applicant can oppose the request. It has a responsibility to communicate its opposition to the Commission and the member states.

3. If the notifier/applicant opposes, the member state can still either ban or restrict the cultivation of the GMO crop, in all or part of its territory after the GMO crop has been approved. The position paper presents seven grounds on which the ban can be justified and other factors that the member state need to consider when taking the measures (such as conformity with Union law). (The Council 2014, 349/5.)

In a nutshell, this was the content of the controversial “two-step procedure” and the grounds suggested by the Council. To provide clarity, a few details are excluded, such as within how many days the parties need to communicate their wishes to one another. According to Votewatch, 26 countries voted in favor of the proposal. Only Luxembourg and Belgium abstained. Luxembourg was especially worried of “the involvement of GMO businesses in the proposed authorization process” and “wonders about the balance of power between the Member States, those with smaller administrations, and GMO businesses”. In addition, Luxembourg mentioned the public opinion of the country, which is against the GMOs and that Luxembourg “will continue to apply the precautionary principle in respect of GMOs”. Due to these reasons, Luxembourg delegation was unable to fully support the proposed text (Votewatch 2014). The voting results on the Council’s position at first reading corresponded with the predominant notion of the Council’s normal ‘culture of consensus’ which refers to the fact that the noteworthy number of proposals are adopted either unanimously or with just one or two votes against (Heisenberg 2005).

What exactly made the proposal so controversial and subject to heated conversation in the Parliament? Mute Schimpf, the Food Campaigner for Friends of the Earth Europe explains in the Parliament Magazine that the paper, as it currently stands, gives power in hands of the biotech companies and does not give member states “solid legal basis” on which to justify the ban. The need to ask first from the biotech companies would in her words put the countries opposing GMO crops “on the back foot against the wishes of the biotech industry”. In addition, she is hinting that the political pressure from various sources has pushed the GMO-critical countries to accept this position and reminds of the pressure faced by eight member states that already have sought to ban the cultivation, coming from the Commission, biotech companies and the US via WTO (The Parliament Magazine 23.6.2014).

Another key issue that has been the matter of debate during the legislative process was the grounds on which a member state can justify a ban. According to the Council’s paper, the grounds were the following: environmental policy objectives, town and country planning, land use, socioeconomic impacts, avoidance of GMO presence in other products without prejudice to Article 26a, agricultural policy objectives and public policy (The Council 2014, 349/5). As can be noticed, all three grounds

suggested by the Parliament included on the list: environmental grounds, socioeconomic impacts and grounds related to land use and to town and country planning. In this respect, the Council's and the Parliament's position did not differ, however, the Parliament included a more comprehensive explanation of each ground.

### ***Towards an agreement between the Council and the Parliament***

After the Council published this position at first reading on 23.7.2014 containing this new idea which was subject to heated discussion in the Parliament, the two institutions had to negotiate before reaching the final agreement. Under the co-decision procedure, the Parliament can approve, reject or propose amendments to the Council's position at first reading. In this case, the Parliament approved the text with amendments, which meant that the text amended by the Parliament was forwarded to the Council and the Commission, "which shall deliver an opinion on those amendments". (TFEU, article 294.) On 13.1.2015, the Parliament published its opinion second reading in which it was stated that as the agreement was reached between the institutions, parliament's position is the same as the final legislative act. The decision of the Parliament was thus "approval with amendments". The final version was signed on 13.3.2015. However, the preliminary agreement was reached already in December 2014. (European Parliament 2015).

Agreement in trilogue On 11 November 2014, the EP's Environment Committee voted on its recommendation for second reading (rapporteur: Frédérique Ries, ALDE, Belgium), setting Parliament's position for negotiations. Following that, Parliament and Council reached provisional agreement on 3 December 2014. Member States would only be allowed to ban GMOs on the basis of environmental policy objectives which do not conflict with the environmental risk assessment conducted by EFSA. In addition, Member States will be able to invoke agricultural policy objectives or other compelling grounds, such as land use, socio-economic impacts, coexistence and public policy. In addition to individual crops, Member States would also be able to prohibit groups of GMOs. The legal basis of the Directive remained Article 114 TFEU (internal market). Parliament's request to establish a liability regime in case of damage was not retained. As to co-existence, Member States in which GM crops are cultivated will have to avoid cross-border contamination by establishing buffer zones along their borders with Member States in which GMOs are not grown. Coreper endorsed the agreement on 10 December and the EP's Environment Committee on 17 December 2014, allowing a vote in plenary to confirm the agreed text (European Parliament 2015).

It is challenging to gain information on informal negotiations between the two co-legislators. Huber and Shackleton have also observed the problem and argue that there is “a strong case for rebalancing the legislative process, given the importance of transparency in making possible informed input, debate and participation” (Huber and Shackleton 2013, 1052). They note that this would be as indicated in the Treaty of Lisbon, according to which “decisions are taken as openly as possible and as closely as possible to the citizen” (Art. 1 TEU), Parliament and Council “shall meet in public ... when considering and voting on a draft legislative act” and they “shall ensure publication of the documents relating to the legislative procedures” (Art. 15 TFEU). They present a number of measures that can be taken to operationalize these fairly broad objectives such as more public debates between the institutions, publishing the Parliament’s mandate for negotiations along with all relevant documents and opening up the Council’s COREPER and working groups meetings to web streaming. These measures would enable everyone in the EU to observe considerably better the progress of legislation, that after all, have a direct effect on the life of every EU citizen (Huber and Shackleton 2013, 1052).

This lack of transparency means that what happened in the negotiations between the two co-legislators cannot be analyzed in detail here. Instead, the analysis is based on the documents available in the Eurlex: the positions of the two institutions at first reading, comments of the Commission on them and the final version. The relative influence of the institutions is assessed by analyzing these official documents available in Eurlex. This will be done in the “analysis section”.

### ***Reactions in the Parliament***

According to Votewatch.com, 480 MEPs voted in favor, 159 against and 48 abstained. GUE-NGL and the Greens voted collectively against the proposal. Most of the MEPs in the EFDD abstained. ALDE, EPP and S&D voted in favor, yet there were few rebels in each group that either abstained or voted against the proposal. Most of the non-attached members voted against the proposal (Votewatch 2015).

Elizabeth Köstinger, an Austrian MEP and a member of the European People’s Party (EPP) described the debates in the European Parliament as follows: “the debates in the environment committee were emotional, to say at least. Every MEP had a personal opinion on the topic, ranging from fierce rejection of GMO to avid defense, thereby reflecting a considerable rift between member states’

positions. The Council position, as a basis for discussion, was not to everyone's taste. In particular, its core element, the 2-step procedure that required that 'applicants' approval to the member state's demand to opt-out, was subject to heated debates amongst political groups" (Euractive 20.4.2015).

In the press release in the EPP's website, Peter Liese, MEP and EPP Group Spokesman on environment and food safety comments the piece. He describes it as "a historic breakthrough" and that "exaggerated demands of the Greens have been stopped" (EPP press release 2015). It does not become clear to what "exaggerated demands" he is referring to: perhaps changing the legislative base from internal market to environment or liability requirements to GMO producers. Still, the fact that he is mentioning the Greens as important pushers for (probably more environmentally ambitious) policy is interesting in the light of the EU literature. Namely, one reason that is given to the pro-environmental nature of the European Parliament is the activity of the Environmental Committee, and especially the Greens in it.

Even though everyone in the Parliament did not agree with the legislative proposal, the Parliament acted in accordance vis-à-vis to other EU institutions: it tried to 'greener' the legislative proposal and acted to somewhat counterintuitive manner when it came to competence-maximizing and pro-integration preferences by being willing to grant more freedom to member states and give powers back to member state-level. There has been voices within the Parliament, who have also believed that the Parliament managed to 'greener' the proposal such as a French MEP Gilles Pargneaux (The Parliament Magazine 27.2.2015).

Pargneaux was not completely satisfied with the final version but believed that the Parliament was able to enhance the proposal in some notable respects. Importantly to him, in the final version, there is no longer the two-step procedure in which the notifier/applicant has a significant role. Pargneaux describes this as "one of the greatest victories for the parliament and in future member states will have the last word, not Monsanto" (The Parliament Magazine 27.2.2015). As the representatives of the environmental organizations, he seemed to believe that the two-step procedure suggested by the Council would have given power from the democratically elected representatives to the biotechnology companies. In addition, he argues that in the final version, "there is also more security for farmers and traditional or organic farming techniques" since within two years, member states are going to take actions to prevent traditional crops from contamination by GM crops in border areas. He describes the negotiations "long and difficult" and the Council as a negotiator "inflexible". Even though the Parliament was unable to convince member states to change the legislative base from the prism of 'internal market' to 'environment', Pargneaux believes that the Parliament was able to 'greener' the legislative proposal (The Parliament Magazine 27.2.2015.)



The Greens voted against the final draft. Green food safety spokesperson, Bart Staes, said: “This new scheme will ease the way for GMOs in Europe, whilst failing to respond to the need to address the flawed EU procedure for authorizing GMOs. Despite a majority of EU member states and citizens being consistently opposed to GMOs, the real purpose of this new scheme is to make it easier to wave through EU authorization of GM crops. Countries opposed to GMOs are given the carrot of being able to opt-out of these authorizations but the scheme approved today fails to give them a legally-watertight basis for doing so. This is a false solution” (Euractive 13.1.2015). Also Greenpeace’s EU food policy director Franziska Achterberg believed that the Commission is offering EU countries “a fake right to opt out that won’t stand up in any court” (Financial Times 22.4.2015).

Currently, only Monsanto GM maize, authorized in 1998, is grown, mainly in Spain and Portugal but also in the Czech Republic, Romania and Slovakia. Other pro-GM governments, the UK and the Netherlands, would like to see many more varieties approved and grown in their soils. But they have been frustrated by opponents, such as France, Germany, Luxembourg and Austria, which have blocked the qualified majority required in Brussels to give the go-ahead. These countries together with Bulgaria, Greece, Hungary, Poland and Italy have adopted safeguard measures prohibiting the cultivation on their territories. Today’s decision means that the 7 GMOs already approved but not cultivated in Europe could find their way into European fields as soon as early as next year. Others might find their way in the near future (Euractive 13.1.2015).

### *Other reactions*

The analysis of Financial Times gives a harsh judgement of the proposal. Already in their title, they state that “EU proposal on genetically modified crops satisfies no one”. Significantly, the new legislation could further complicate already contentious negotiations between the EU and US over a free trade deal. US negotiators had hoped that liberalization of GMO foods could be part of the agreement, and have joined with other countries to warn Brussels that such a plan could violate the EU’s obligations in the World Trade Organization. Michael Froman, the US trade representative, stated he was “disappointed” by the proposal, saying it risked “dividing the EU into 28 separate markets” and put the EU-US trade deal at risk. “At a time when the US and the EU are working to create further opportunities for growth and jobs through the [trade deal], proposing this kind of trade restrictive action is not constructive,” Mr. Froman said (Financial Times 22.4.2015).

British Conservatives in the European Parliament called the decision a “cave-in” and said any decision should be left to scientific evaluation. “It is a dark day when the EU’s executive is happy to sit by and watch its own basic freedoms, trade commitments, farmers and consumers suffer while ignoring the scientific advice that taxpayers themselves are paying for,” said Julie Girling MEP, the Tory spokeswoman on environmental issues in the European Parliament (Financial Times 22.4.2015). The stance of the British Conservatives seem to follow the pro-science, or “rationalist” stance taken by the UK in general to the GMOs.

Statements of the environmental organizations are to some extent indicating how pro-environmental the final version was. Greenpeace’s EU unit said the policy would still allow Brussels to authorize the import of bioengineered seeds even if a majority of national governments and the European Parliament objected. It warned that the EU’s internal market rules, which attempt to harmonize standards across the bloc, could supersede the plan if challenged in court. “The Commission is offering EU countries a fake right to opt out that won’t stand up in any court,” said Franziska Achterberg, Greenpeace’s EU food policy director. Commission officials acknowledged that national governments would have to prove “overriding reasons of public interest” in court to defeat a challenge to any bans that they imposed.

After the Directive entered into force, nineteen member states have taken the chance and requested opt-outs for all or part of their territory from cultivation GMOs. These member states include Austria, Belgium for the Wallonia region, Britain for Scotland, Wales and Northern Ireland, Bulgaria, Croatia, Cyprus, Denmark, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland and Slovenia. In addition, after this policy process came to a close, the Commission gave another proposal that would allow similar opt out of authorizations to place GM crops on the market (European Commission 2015). As regards to the GMOs, the process of Brexit following the UK’s EU referendum in 2016, has opened up a discussion in the UK over whether the country should head for increased cultivation of GMOs once it is no longer subject to the EU legislation. To the EU, Brexit has meant that the EU is losing one of the somewhat pro-GMO countries, meaning that those whose reaction to the GMOs can be labelled as “rational” are losing one of their supporters. Following all this, it is likely that the EU is not going to change its precautionary approach to GMOs anytime soon.

## *Analysis*

As regards to the first hypotheses and the expected pro-integration and competence-maximizing preferences of the institutions, after the relaunch of the negotiations in 2014, nothing very noteworthy did not seem to happen in this respect. The Commission still acted as an obedient servant and the Parliament was still for the granting the right to ban the cultivation. As Pollack puts it, “supranational autonomy and influence, ... is not a simple binary matter of obedient servants or runaway Eurocracies, but rather varies along a continuum between the two points” (Pollack 1998, 218). In this analysis, which is based on the EU’s official documents and media sources, it seems that the Commission has acted more as “an obedient servant”.

When it comes to the Parliament’s green credentials, it did indeed demonstrate pro-environmental preferences. It tried to change the legislative base from internal market to environment, get environmental grounds as some grounds on which the ban could be based on, get liability to GMO producers and make the Council to relinquish the controversial two-step procedure. Even though the Council and the Commission did not agree to incorporate all these request, the pro-environmental preferences of the Parliament were apparent.

It is time to address the final question regarding the relative influence of the institutions in the process. The Commission exercised power vis-à-vis to the Parliament by blocking its amendments which showed considerable environmental ambition. This is in line with the findings of the quantitative study by Burns et al. which found out that the European Parliament have demonstrated environmental ambition in a number of policy cases and that “The Commission emerged as a central explanation for the success of EP amendments and seemed unlikely to support greener amendments, but was less likely to reject amendments that are both green and important” (Burns et al. 2012, 952).

Namely, the Commission accepted in full, in part of principle or subject 21 of the 28 amendments introduced by the Parliament “as it considered that these amendments could clarify or improve the Commission’s proposal and were consistent with its general aims” (European Commission 2014a, 3). However, it rejected the pro-environmental amendments such as the change to the legal basis, liability requirements and referring to the precautionary principle (European Commission 2014a, 7-8), mentioned in the amendment 46 that “there is a need for the precautionary principle to be taken into account in the framework of this Regulation and when implementing it” (European Parliament 2011, C33E/352). As mentioned in the co-decision part of the thesis, some of the most radical views have claimed that the Commission’s political power has come close to none after introducing the co-

decision procedure. While it might be true that the Parliament has gained more power at the expense of the Commission, the finding of this study suggests that the co-decision procedure has not made the Commission completely powerless.

Even though the main changes introduced by the Parliament were not adopted by the common position, it managed to negotiate a notable change to the final version: there is no notifier/applicant system. This suggests that the views of the Parliament do play some part in the Council negotiations. However, the final version was more similar to the first position of the Council, than the considerably 'greener' first position of the Parliament. On this evidence, the key player in institutional terms was the Council, and the member states that compose it were evidently crucial in the outcome of the negotiations.

## 6. Conclusions

In creating this thesis, I have conducted a careful case study concerning the policy process that led to the right to ban the cultivation of GMOs. In doing so, I have tested hypotheses in relation to: 1. the expected preferences of supranational institutions and whether they are acting upon those preferences; and 2. the dynamics within the Council. Regarding the first, I hypothesized at the outset that the Commission and the Parliament would share a common preference for deeper European integration and use their statutory discretion to move policy outcomes in that direction. Furthermore, I hypothesized that in addition to these preferences, the Parliament would also have pro-environmental preferences upon which it acts. Regarding the second point, I hypothesized that the environmental leader-laggard dimension would explain the dynamics within the Council. Put simply, the focus of the thesis was on these aspects of the policy process: policy preferences of the institutions and actors within the Council, as well as the relative influence of each institution.

By and large, this study does not support the first hypothesis concerning the pro-integration and competence-maximizing preferences of the supranational institutions. Yet after a closer look to the actions of the Commission, it proved to be slightly less eager to change the status quo considerably. For instance, the leaked impact assessment suggested that the Commission might have been slightly less willing to erode the supranational system than it first appeared. Furthermore, the Commission's initial proposal for the Directive was not very far-reaching, but rather, the directive suggested an option that seemed to be close to the status quo. However, the Commission was willing to broaden the grounds on which the ban could be justified, as suggested both by the Parliament and the Council. Neither did the Commission seem to seek to use "windows of opportunities" to promote pro-integration or competence-maximizing preferences. The Commission acted in accordance throughout the policy process, and in the vacuum of the runaway Eurocracy to the obedient servant, its role was closer to the latter. The Parliament was also supportive towards the proposal from the beginning.

The chosen theoretical framework provided considerable help in making sense of the policy process. It proved to be useful and helped to identify the right questions to be asked. According to EU literature, how can we expect EU institutions and member states to act? What might be the reason they are not acting as expected? This helped to set the focus on the relevant changes in the political environment, from the perspective of the institutions, to issues such as the rise of Euroscepticism and the lack of trust towards the food safety authorities.

When it comes to the second hypothesis, the Parliament indeed demonstrated pro-environmental preferences in the course of the process. Using the environmental ambition typology designed by Carter and Burns (2010), the proposals of the Parliament could either be categorized as “weak ecological modernization” or as “strong ecological modernization”. Even though the Parliament was ready to relinquish some competencies designated to the EU, it still acted upon the pro-environmental ones. This policy process provided a rare chance to study the actions of Parliament when two expected preferences are in conflict. Namely, oftentimes pro-environmental policies also translate to more competences to the EU level. As mentioned earlier in the thesis, the field of environmental policy is very Europeanized, meaning that the EU legislation is limiting considerably the options available on the national level. Therefore, the policy field is very EU-dominated, and a lot of competencies are designated to the EU actors. Usually the legislation comes in a form of directive, which allow the member states to go further than settled in the directive, if they so wish.

Analyzing the policy process through a prism of leader/laggard dimension proved to be challenging. Based on the material (documents in the Eurlex accompanied with journalistic reports), identifying the laggards in particular proved to be difficult. However, this theoretical framework helped to analyze the dynamics within the Council, especially when focusing on an action of the pro-environmental member states. This also proved useful when observing the role of Austria in the policy process, as it changed its strategy in 2009 from an opt-outs to a constructive pusher and made a concrete suggestion to the other delegations for an amendment to the current legislative framework.

In addition to the aforementioned hypotheses, the interest of this thesis is portrayed in the question: what was the relative influence of these institutions? The Commission rejected the Parliament’s most pro-environmental amendments. The final version seemed to be closer to the common position of the Council than the Parliament. Yet the Parliament managed to ‘greener’ the proposal and negotiate it show that there is no two-step procedure in the final version. On this evidence, I argue that the Council was slightly more powerful vis-à-vis to the Parliament.

Lastly, in regards to the question of what explains the outcome of the legislative process, there is considerable evidence in the literature that in the past, the Commission has had an interest for competence-maximizing and promoting further integration. The counterintuitive behavior in this case can be a result of various factors. First, one plausible explanation is that the rising anti-EU sentiments have made the Commission more cautious in its actions. As pointed out earlier, in the

2010s the Commission has made less proposals for new regulation compared to many other years. There is also some evidence that in the past, the Commission has acted more cautiously when the anti-EU sentiments have been on the rise and thus it is possible that the Commission has taken these sentiments into consideration this time around. Put simply, the Commission might not be acting as a competence-maximizer or pro-integration in case it senses the strong opposition towards the integration project. When the rise of Euroscepticism is accompanied with the general opposition towards GMOs, it seems rational from the side of the Commission to not act upon these preferences, even though it would still have them. The political environment in which the Commission operates seems to have an impact on the Commission's courage to act upon its preferences.

Second, it is possible that the Commission is no longer having these preferences. At least this possibility should not be completely ruled out. The literature on the principal-agent model is not giving much attention to the question of where these preferences are stemming from. It can be possible that these preferences change over time when the circumstances change. However, there is fairly little reason to believe that the results of the case study would be enough to question the viability of the principal-agent model in explaining decision-making in the European Union. Instead of giving grounds for questioning the viability of the model, the result of this study could suggest that the EU institutions are not acting upon these preferences in every situation.

The literature on the principal-agent model already admits that the agents might not pursue their true preferences in every situation. A reason behind it might be that the agent is worried of being punished on behalf of the principal. In general, it seemed that was not the only issue facing the Commission. The entire political situation seemed rather unfavorable for sticking with a supranational solution. Taken the political circumstances around the policy process, it seemed very difficult for the Commission to stand for a European solution. Some of the member states were strongly opposing the cultivation of GMOs in their territory. According to the polls, the European public strongly opposes GMOs. The decision-making on the new GMO crops for cultivating was not working. It is likely that the Commission did not want to put up a battle it could not win.

Overall, the finding of the study is interesting for further research on the relations between EU institutions and the preferences of the Commission: it might be that the Commission is not acting upon these preferences in a certain political environment. In other words, the Commission might act upon these preferences only in certain favorable conditions. Not acting upon these preferences seems rational from the side of the Commission in a political environment unfavorable to further integration.

Promoting integration further in this particular situation could be counterproductive for the future of the European Union and increase the anti-EU sentiments. Therefore, giving in to the intergovernmentalism seems to be the rational thing to do in this case even though the long-term preferences were contradictory. An interesting pursuit for further studies would be identifying the unfavorable and favorable conditions.

In general, it will be interesting to see what happens next in this policy field. For instance, one intriguing question is, what will happen in this policy field after Brexit. For sure, the EU will lose one of the pro-GMO countries, which likely empowers the anti-GMO camp (“the rationalists”) within the EU. On the other hand, after Brexit the UK may pursue its own policies more freely as regards to GMOs, which will likely lead to wider GMO cultivation in the country. According to The Telegraph, this sort of planning has already started in October 2016 (The Telegraph 26.10.2017). Therefore, after Brexit the EU will likely have a pro-GMO country which cultivates GMOs more widely than allowed in the EU right next to its border. In theory, the UK could challenge the EU’s strict regulation on GMOs through WTO, either alone or by supporting the US. However, it is not very likely in the near future, as maintaining a good relationship with the EU is of a top priority for the UK and challenging a country through WTO always causes tensions between the stakeholders. In addition, the UK is not having as strong biotechnology industry as the US, which would be pushing the UK towards starting a dispute over biotechnology products. Therefore, Brexit will likely mean wider changes in the UK’s GMO policy than the EU’s.

However, when it comes to the US, the question is not whether there is going to be a new dispute over agricultural products between the EU and the US, but rather when. There is a long list of products over which the EU and the US have disputed, and the reasons these disputes have occurred have not faded away: the approach towards food safety issues remains fundamentally different, which does not please the industry in the US as it would like to export more of its products to the EU. The TTIP negotiations have been on hold for some time, but if the negotiations are been relaunched, GMOs will become again an important topic in the negotiations.

What is pretty sure, is that the EU’s reluctant stance towards GMOs will remain in the near future. After the policy process studied in this thesis came to a close, a high number of member states have invoked a total ban on the GMO cultivation in their territory. Some major shifts in attitudes would have to happen so that the EU as a whole would be more open to cultivation of GMOs. Because of the sensitivity of the issue, this policy area might remain a policy sector, in which the EU institutions



decide not to take integration further. The policy process studied here was a rare case, in which integration took steps backwards, just slightly more than a year before Brexit. These two issues showed that integration may take steps backwards: powers may be taken back from the EU level to the member state, and a country that has once joined the EU, may also decide to leave.

These two instances should not be taken as signs that the EU is falling apart, but instead, as signs that there are other roads than a road towards “an even closer union”. As Juncker has stated in the political guidelines for the new Commission (European Commission 2014), probably an open, honest look should be taken to EU policies: which issues are better decided on the national level, and which issues should be decided on the EU level? The directive 2001 studied here is an example of a case, in which the decisions are best made in the national level, as the approach towards the GMOs is so varying in the EU. Hopefully this work will continue within the EU.

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